



Australian Capital Territory

Dangerous Substances Act 2004

A2004-7

Republication No 12

Effective: 12 May 2005 – 1 June 2005

Republication date: 12 May 2005

Last amendment made by A2005-24

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Dangerous Substances Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 12 May 2005. It also includes any amendment, repeal or expiry affecting the republished law to 12 May 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

Dangerous Substances Act 2004

Contents

	Page	
Chapter 1	Preliminary	
1	Name of Act	2
3	Dictionary	2
4	Notes	2
5	Offences against Act—application of Criminal Code etc	2
Chapter 2	Important concepts	
Part 2.1	Operation of Act	
6	Purpose of Act	4
7	Exclusions from Act	5
8	Relationship of Act to other laws	5

R12
12/05/05

Dangerous Substances Act 2004
Effective: 12/05/05-01/06/05

contents 1

Contents

	Page
9 Relationship of regulations to approved codes of practice and incorporated documents	6
Part 2.2 Important terms	
10 Meaning of <i>dangerous substance</i>	7
11 <i>Handle</i> a dangerous substance	9
12 <i>Non-commercial</i> handling of a dangerous substance	10
13 <i>Correctly</i> classified for a dangerous substance	10
14 <i>Correctly</i> for packed, stored, labelled and placarded	11
15 Meaning of <i>hazard</i> and <i>risk</i>	12
16 <i>Reasonable steps</i> for a risk	13
17 <i>Person in control</i> for premises, plant etc	13
18 <i>Responsible person</i> for a dangerous substance	14
19 What is a <i>safety management system</i>	15
Part 2.3 Complying with Act	
20 Person may have more than 1 duty under Act	18
21 Person not relieved of duty because someone else also has same duty	18
22 Incorporated documents and approved codes of practice may be considered	19
Chapter 3 Safety duties for dangerous substances	
Part 3.1 Safety duties	
Division 3.1.1 General safety duty of everyone	
23 General safety duty of everyone involved in handling dangerous substances anywhere	20
Division 3.1.2 Handling of dangerous substances in trade or commerce	
24 Application of div 3.1.2	20
25 Safety management system required for certain people in control of handling dangerous substances	21
26 Particular safety duties of manufacturers	21
27 Particular safety duties of importers	22
28 Particular safety duties of suppliers	23

	Page
Division 3.1.3 Premises where dangerous substances are handled in trade or commerce	
29 Application of div 3.1.3	24
30 Safety duties of everyone at premises	25
31 Safety duties of people in control of premises	26
Division 3.1.4 Plant and systems for handling dangerous substances for trade or commerce	
32 Application of div 3.1.4	27
33 General safety duties for plant and systems	27
34 Safety duties of people in control of plant and systems	28
35 Safety duties of people in control of design, manufacture, import and supply of plant and systems	30
36 Safety duties of people in control of installation of plant and systems	31
Division 3.1.5 Reporting of dangerous occurrences	
37 Application of div 3.1.5	32
38 Meaning of <i>dangerous occurrence</i>	32
39 Person in control of premises—safety duty to report actual or likely dangerous occurrences	33
Division 3.1.6 Miscellaneous	
40 Safety duties do not limit each other	34
Part 3.2 Failure to comply with safety duties	
41 Meaning of <i>safety duty</i> for pt 3.2	35
42 Failure to comply with safety duty—general offence	36
43 Failure to comply with safety duty—exposing people to substantial risk of death or serious harm	36
44 Failure to comply with safety duty—causing death or serious harm to people	37
45 Failure to comply with safety duty—exposing property or environment to substantial risk of substantial damage	37
46 Failure to comply with safety duty—causing substantial damage to property or environment	38
47 Alternative verdicts for failure to comply with safety duties	39

	Page
Chapter 3A Asbestos	
Part 3A.1 Important concepts	
47A Meaning of <i>asbestos</i> and <i>asbestos product</i>	41
Part 3A.2 The task force	
47B Establishment of task force	42
47C Members of task force	42
47D Chairperson of task force	42
47E Role of task force	42
47F Arrangements for use of inspectors etc	43
47G Report of analysis	44
47H Expiry—pt 3A.2	44
Part 3A.3 Public education	
47I Duty to publish educational material	45
Part 3A.4 Special duties of care for asbestos	
47J Liability of owners and occupiers to inform	46
47K Liability of owners and occupiers to inspect	48
Part 3A.5 Other provisions about asbestos	
Chapter 4 Licences for dangerous substances	
Part 4.1 General—licences	
48 Meaning of <i>close associate</i> for ch 4	49
49 Working out whether person is a <i>suitable person</i>	50
50 Applications for licences etc to comply with Act	52
51 Power to ask for information from applicants, licensees and others	53
Part 4.2 Issue amendment, replacement and surrender of licences	
52 Licence application and decision	56
53 Licence conditions	56
contents 4	R12
Dangerous Substances Act 2004	12/05/05
Effective: 12/05/05-01/06/05	

	Page
54	57
55	57
56	57
57	58
58	59
59	60
60	61
61	61
62	62
Part 4.3	Offences relating to licences
63	63
64	63
65	64
66	64
Part 4.4	Disciplinary action
67	65
68	65
69	67
70	68
71	69
72	69
Chapter 5	Other serious offences
Part 5.1	Prohibited and controlled dangerous substances
73	72
74	72
75	73
76	74
77	75

Contents

	Page
78	76
79	76
80	77
81	77
82	78
83	79
84	80
Part 5.2	Preservation of site of dangerous occurrence
85	81
86	82
87	82
Chapter 6	Compliance measures
Part 6.1	Information and documents
88	83
89	84
90	85
91	85
92	86
Part 6.2	Compliance agreements
93	88
94	88
95	89
96	90
97	91
98	91
Part 6.3	Improvement notices
99	92
100	92

	Page
101	92
102	93
103	94
104	94
105	95
106	95
107	96
Part 6.4	Prohibition notices
108	97
109	97
110	99
111	100
112	100
113	101
114	101
115	101
116	102
117	102
118	103
119	103
120	103
121	104
Part 6.5	Enforceable undertakings
122	105
123	105
124	106
125	107
126	107
127	107
128	108
Part 6.6	Injunctions
129	109

Contents

	Page	
130	Enforcement of injunctions	110
131	Amendment or discharge of injunctions	110
132	Interim injunctions—undertakings about damages	110
133	Magistrates Court's other powers not limited	111
Part 6.7	Taking and analysis of samples	
134	Inspector may buy samples without complying with pt 6.7	112
135	Person in charge etc to be told sample to be analysed	112
136	Payment for samples	112
137	Samples from packaged substances	113
138	Procedures for dividing samples	113
139	Exception to s 138	113
140	Certificates of analysis by authorised analysts	114
Chapter 7	Enforcement powers	
Part 7.1	General	
141	Definitions for ch 7	115
Part 7.2	General powers of inspectors	
142	General power to enter premises	116
143	Production of identity card	118
144	Consent to entry	118
145	General powers of inspectors—premises	119
146	General powers of inspectors for public places	121
147	Contravention of requirement by inspector	121
148	Power to take action to prevent etc imminent risk	122
149	Report about action under s 148	123
150	Recovery of Territory's costs for action under s 148	123
151	Power of entry etc in relation to dangerous occurrences	124
152	Power to seize things	125
153	Action in relation to thing seized	126
154	Power to destroy unsafe things	127
155	Power to require name and address	128

	Page
156	Inspector's power to require production of licence 129
Part 7.3 Search warrants	
157	Warrants generally 130
158	Warrants—application made other than in person 131
159	Search warrants—announcement before entry 132
160	Details of search warrant to be given to person in charge etc 133
161	Person in charge entitled to be present during search etc 133
162	Moving things to another place for examination or processing 134
163	Use of electronic equipment at premises 135
164	Person with knowledge of computer or computer system to assist access etc 136
165	Securing electronic equipment 137
166	Copies of seized things to be provided 138
Part 7.4 Return and forfeiture of things seized	
167	Receipt for things seized 140
168	Access to things seized 140
169	Return of things seized 141
170	Application for order disallowing seizure 143
171	Order for return of seized thing 143
172	Adjournment pending hearing of other proceedings 144
173	Forfeiture of seized things 144
174	Return of forfeited things 145
175	Cost of disposal of things forfeited 145
Part 7.5 Other enforcement provisions	
176	Damage etc to be minimised 147
177	Compensation to be paid in certain circumstances 147
Chapter 8 Emergency powers	
178	Meaning of <i>recall order</i> for ch 8 149
179	Emergency orders 149
180	Nature of emergency orders 149

Contents

	Page
181	Special provisions for recall orders 150
182	How emergency orders are made 151
183	Stay or variation of emergency orders by Supreme Court 152
184	Failure to comply with emergency order 152
185	Compensation for emergency order 153

Chapter 9 Administrative review of decisions

186	Application of ch 9 155
187	Notice of reviewable decisions 155
188	Internal review of certain decisions 156
189	Applications for internal review 156
190	Internal review 157
191	Review of decisions by administrative appeals tribunal 157

Chapter 10 Procedural and evidentiary provisions

Part 10.1 General provisions about offences against Act

192	Acts and omissions of representatives 158
193	Criminal liability of corporation officers 159
194	No defence to claim deterioration of sample 161
195	Remedial orders by courts for offences 161
196	Court-directed publicity for offences 161
197	Publication by chief executive of convictions etc 162
198	Court may order costs and expenses 163
199	Court may order forfeiture 164
200	Notices of noncompliance by territory entities 164

Part 10.2 Evidentiary provisions

201	Presumptions 166
202	Certificate evidence etc 166
203	Evidence of analysts 168
204	Admissibility of analysis of sample taken by inspector 168
205	Power of court to order further analysis 169

	Page
Chapter 11 Administration	
206 Inspection of incorporated documents	170
207 Inspectors	170
208 Identity cards	170
209 Functions of inspectors	171
210 Appointment of authorised analysts	171
211 Secrecy	172
212 Protection from liability	173
Chapter 12 Regulations about dangerous substances	
213 Regulations may apply etc instruments	175
214 Scheme for explosives to be prescribed	175
215 Regulations about licences	176
216 Regulations about dangerous substances generally	177
217 Regulations may exempt people, plant or premises from Act	180
Chapter 13 Miscellaneous	
218 Minister may exempt people, plant, premises or dangerous substances from Act	181
219 Codes of practice	181
220 Notification of certain incorporated documents	182
221 Determination of fees	184
222 Approved forms	184
223 Regulation-making power	184
224 Review of Act	184
Chapter 14 Consequential and transitional matters	
226 Existing licences	186
228 Transitional regulations	186
229 Modification of ch 14's operation	187
231 Expiry of ch 14	187

Contents

Dictionary	Page
	188
Endnotes	
1 About the endnotes	197
2 Abbreviation key	197
3 Legislation history	198
4 Amendment history	199
5 Earlier republications	203
6 Modifications of republished law with temporary effect	204
7 Uncommenced amendments	205



Australian Capital Territory

Dangerous Substances Act 2004

An Act about dangerous substances, and for other purposes

Chapter 1 Preliminary

1 Name of Act

This Act is the *Dangerous Substances Act 2004*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*infringement notice*—see the *Magistrates Court Act 1930*, section 117.’ means that the term ‘infringement notice’ is defined in that section and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms

used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Chapter 2 Important concepts

Part 2.1 Operation of Act

6 Purpose of Act

- (1) The purpose of this Act is to protect the health and safety of people, and to protect property and the environment from damage, from the hazards associated with dangerous substances.
- (2) The purpose of this Act includes the following:
 - (a) to eliminate the hazards associated with dangerous substances;
 - (b) if it is not reasonably practicable to eliminate the hazards—to minimise as far as reasonably practicable the risks resulting from the hazards by, for example—
 - (i) ensuring that the hazards are identified and the risks are assessed and controlled; and
 - (ii) requiring information and training about the hazards and the safe handling of the substances to be made available to people handling the substances;
 - (c) to allocate responsibilities to people in relation to dangerous substances;
 - (d) to regulate dangerous substances, including by providing for authorisation, licensing, notification and registration schemes for dangerous substances.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

7 Exclusions from Act

- (1) This Act does not apply to the following:
 - (a) the transmission, distribution and use of natural gas to which the *Gas Safety Act 2000* or *Utilities Act 2000* applies;
 - (b) the transmission, distribution and use of LPG to which the *Gas Safety Act 2000* applies;
 - (c) ammunition under the *Firearms Act 1996*, other than the manufacture or transport of ammunition;
 - (d) an infectious substance under the *Clinical Waste Act 1990*;
 - (e) a radioactive substance under the *Radiation Act 1983*;
 - (f) anything else prescribed by regulation.
- (2) In this section:

LPG—see the *Gas Safety Act 2000*, dictionary, definition of **gas**, paragraph (b).

8 Relationship of Act to other laws

- (1) The duties under this Act in relation to dangerous substances are in addition to duties in relation to them under any other law in force in the ACT.

Note 1 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

Note 2 Other legislation in force in the ACT relating to dangerous substances includes the following:

- *Emergencies Act 2004*
- *Environment Protection Act 1997*
- *Occupational Health and Safety Act 1989*
- *Poisons Act 1933*

- *Poisons and Drugs Act 1978*
- *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth).

Note 3 See the *Emergencies Act 2004* for provisions relating to hazardous materials incidents (which may include dangerous occurrences).

Note 4 See the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth), and the regulations made under that Act, for the transport of dangerous substances (other than explosives, infectious substances and radioactive substances) that are classified as dangerous goods under that Act.

Note 5 Territory laws have no effect to the extent that they are inconsistent with a Commonwealth law (see Self-Government Act, s 28).

- (2) A duty or power under another territory law in relation to a dangerous substance has no effect to the extent that it is inconsistent with a duty under this Act in relation to the substance.
- (3) However, a duty or power under another territory law in relation to a dangerous substance must not be taken to be inconsistent with a duty under this Act to the extent that they can operate concurrently.

9 Relationship of regulations to approved codes of practice and incorporated documents

- (1) An approved code of practice or incorporated document has no effect to the extent that it is inconsistent with a regulation.
- (2) However, an approved code of practice or incorporated document must not be taken to be inconsistent with a regulation to the extent that it can operate concurrently.

Note 1 For the approval of codes of practice, see s 219.

Note 2 For the meaning of *incorporated document*, see the dictionary.

Note 3 For the availability and the appropriate edition (if any) of an incorporated document, see s 206 and s 220.

Part 2.2 Important terms

10 **Meaning of *dangerous substance***

- (1) For this Act, a substance is a *dangerous substance* if it—
- (a) can be classified as an explosive substance or explosive article under the Australian Explosives Code; or
 - (b) is listed in the Australian Explosives Code, appendix 1 or appendix 2; or
 - (c) can be classified as a dangerous good under the Australian Dangerous Goods Code; or
 - (d) is listed as a dangerous good or good too dangerous to be transported in the Australian Dangerous Goods Code, appendix 1, appendix 2 or appendix 5; or
 - (e) can be classified as a combustible liquid under Australian Standard 1940; or
 - (f) can be classified as a hazardous substance under the NOHSC approved criteria; or
 - (g) is listed as a hazardous substance under the NOHSC List of Designated Hazardous Substances; or
 - (h) is declared by regulation to be a dangerous substance; or
 - (i) is declared in writing by the Minister to be a dangerous substance.

Note For the meaning of *substance*, see the dictionary.

- (2) A declaration under subsection (1) (i) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(3) In this Act:

Australian Dangerous Goods Code means the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, published by the Commonwealth.

Australian Explosives Code means the *Australian Code for the Transport of Explosives by Road and Rail*, published by the Commonwealth.

Australian Standard 1940 means Australian Standard 1940, *The Storage and Handling of Flammable and Combustible Liquids*.

NOHSC approved criteria means the *Approved Criteria for Classifying Hazardous Substances* approved by the National Occupational Health and Safety Commission under the *National Occupational Health and Safety Commission Act 1985* (Cwlth).

NOHSC List of Designated Hazardous Substances means the *List of Designated Hazardous Substances* approved by the National Occupational Health and Safety Commission under the *National Occupational Health and Safety Commission Act 1985* (Cwlth).

(4) For this Act, a reference to a document mentioned in subsection (3) is a reference to—

- (a) the document as in effect at the commencement of this section; and
- (b) if the document is amended after the commencement of this section, and an incorporated document notice under section 220 for the amendment is notified—the document as amended by the amendment; and
- (c) if the document (or a replacement document mentioned in this paragraph) is replaced by another document after the commencement, and an incorporated document notice under section 220 for the replacement is notified—the replacement document; and

- (d) if a replacement document mentioned in paragraph (c) is amended, and an incorporated document notice under section 220 for the amendment is notified—the replacement document as amended.

Example of replacement document

a new edition of an incorporated document published after the commencement of this section

Note 1 For the meaning of *notification*, see the Legislation Act, s 63

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

11 Handle a dangerous substance

For this Act, *handle* a dangerous substance includes the following:

- (a) import or export the substance;
- (b) manufacture, process or treat the substance;
- (c) supply, receive or dispense the substance;
- (d) mark or label an article, container or package of the substance, or placard or put up signs in relation to the substance;
- (e) pack, consign or carry the substance;
- (f) store the substance;
- (g) possess, or otherwise have custody or control of, the substance;
- (h) use the substance;
- (i) dispose of the substance or render it harmless.

Examples for par (d)

- 1 label a container of a dangerous substance in accordance with the Australian Dangerous Goods Code
- 2 put up warning signs around a factory about hazards associated with a dangerous substance used at the factory

- 3 attach a placard to a building that includes the hazchem code under the Australian Dangerous Goods Code for a dangerous substance stored at the building

Note 1 The dictionary defines the following terms:

- carry
- dispose of
- export
- import
- manufacture
- supply.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

12 ***Non-commercial* handling of a dangerous substance**

For this Act, the handling of a dangerous substance is ***non-commercial*** if the handling does not take place in the course of trade or commerce.

Note For the meaning of ***trade or commerce***, see the dictionary.

13 ***Correctly* classified for a dangerous substance**

- (1) For this Act, a dangerous substance is ***correctly*** classified if—
- (a) if a regulation applies to the classification of the substance—the substance is classified in accordance with the regulation; or
 - (b) if a declaration under subsection (2) applies to the classification of the substance—the substance is classified in accordance with the declaration; or

- (c) in any other case—the substance is classified in accordance with an incorporated document applying to the classification of the substance.

Note 1 For the meaning of *incorporated document*, see the dictionary.

Note 2 An incorporated document has no effect to the extent that it is inconsistent with a regulation (see s 9 (1)).

- (2) The Minister may declare in writing—
- (a) that a dangerous substance belongs, or does not belong, to a stated classification (however described) of dangerous substances; or
- (b) a method for classifying a stated dangerous substance.
- (3) A declaration under subsection (2) has no effect to the extent that it is inconsistent with a regulation.
- (4) A declaration under subsection (2) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

14 **Correctly for packed, stored, labelled and placarded**

- (1) For this Act, a dangerous substance is *correctly* packed or stored if—
- (a) if a regulation applies to the packing or storage of the substance—the substance is packed or stored in accordance with the regulation; or
- (b) if an incorporated document applies to the packing or storage of the substance—the substance is packed or stored in accordance with the incorporated document; or

- (c) in any other case—the substance is packed or stored in a way that eliminates the hazards associated with the substance or, if this is not reasonably practicable, minimises the risks resulting from the hazards as far as is reasonably practicable.

Note 1 For the meaning of *incorporated document*, see the dictionary.

Note 2 An incorporated document has no effect to the extent that it is inconsistent with a regulation (see s 9 (1)).

- (2) For this Act, a dangerous substance is *correctly* labelled or placarded if—
- (a) if a regulation applies to the labelling or placarding of the substance—the substance is labelled or placarded in accordance with the regulation; or
- (b) in any other case—the substance is labelled or placarded in accordance with an incorporated document (if any) applying to the labelling or placarding of the substance.
- (3) In this section:
- dangerous substance* includes a container or package containing a dangerous substance.

15 **Meaning of *hazard* and *risk***

- (1) For this Act, a *hazard* is a thing (including an intrinsic property of a thing), or a situation, with potential to—
- (a) cause the death of or harm to a person; and
- (b) damage property or the environment.
- (2) For this Act, a *risk* is the likelihood of death or harm to a person, or damage to property or the environment, from a hazard.

16 ***Reasonable steps for a risk***

- (1) A regulation may prescribe what are, or are not, *reasonable steps* in relation to a risk.
- (2) However, if a regulation does not prescribe what are, or are not reasonable steps in relation to a risk, all of the following must be considered in working out whether *reasonable steps* have been taken to minimise the risk:
 - (a) the seriousness of the risk;
 - (b) the current state of knowledge about—
 - (i) the hazard giving rise to the risk and the risk itself; and
 - (ii) any ways of eliminating the hazard or minimising the risk;
 - (c) the availability and suitability of ways to eliminate the hazard or minimise the risk;
 - (d) the cost of eliminating the hazard or minimising the risk;
 - (e) anything else prescribed by regulation.

17 ***Person in control for premises, plant etc***

- (1) For this Act, a *person in control* is—
 - (a) for the handling of a dangerous substance—anyone who has control of the handling of the substance (including anyone with authority to make decisions about the handling of the substance); or
 - (b) for premises—anyone who has control of the premises (including anyone with authority to make decisions about the management of the premises); or

- (c) for plant or a system for handling a dangerous substance—anyone who has control of the plant or system or the operation of the plant or system (including anyone with authority to make decisions about the plant or system or the operation of the plant or system); or
- (d) for the design, manufacture, import or supply of plant or a system for handling a dangerous substance—anyone who has control of the design, manufacture, import or supply of the plant or system (including anyone with authority to make decisions about the design, manufacture, import or supply); or
- (e) anyone else prescribed by regulation.

Note **Plant** includes a building or other structure (see dict).

- (2) To remove any doubt, more than 1 person may be a person in control for a duty under this Act.

18 Responsible person for a dangerous substance

- (1) For this Act, a person is a **responsible person** for a dangerous substance if the person is—
 - (a) a person in control of the handling of the substance; or
 - (b) a person in control of premises where the substance is handled; or
 - (c) a person in control of plant or a system for handling the substance.
- (2) To remove any doubt, more than 1 person may be a responsible person for a duty under this Act.

19 What is a *safety management system*

- (1) A *safety management system* for handling a dangerous substance is a system that does each of the following:
- (a) identifies the hazards associated with the substance, having regard to the current state of knowledge about the hazards;
 - (b) identifies and assesses the risks resulting from the identified hazards, having regard to the current state of knowledge about the risks;
 - (c) controls the risks by eliminating the hazards or, if this is not reasonably practicable, minimising the risks as far as reasonably practicable;
 - (d) provides for how compliance with the system is to be documented;
 - (e) complies with any requirement prescribed by regulation (either in addition to or instead of a requirement mentioned in paragraphs (a) to (d)).

Example for par (e)

A regulation may provide that a supplier of a stated dangerous substance may identify the hazards associated with the substance, and identify and assess the risks resulting from the hazards, by reviewing the safety information supplied by the substance's manufacturer under section 26 (1) (e) instead of complying with subsections (2) and (3).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) For subsection (1) (a), the matters that must be considered in identifying the hazards include, for example—
- (a) the chemical and physical properties of the dangerous substance; and

- (b) any chemical and physical reactions that may happen if the substance comes into contact with other substances; and
- (c) the premises, plant and systems for handling the substance; and
- (d) anything else prescribed by regulation for this subsection.

Examples for par (c)

- 1 access to the premises or plant at the premises, including access by members of the public
- 2 the design, physical location and arrangement of areas and plant
- 3 the characteristics of the materials used in plant
- 4 activities, systems of work and non-dangerous substances that could interact with the substance

Note **Plant** includes a building or other structure (see dict).

- (3) For subsection (1) (b), the matters that must be considered in identifying and assessing the risks include, for example—
 - (a) the matters mentioned in subsection (2); and
 - (b) the consequences, at premises where the dangerous substance is to be handled and elsewhere, of incidents that may happen because of the handling of the substance at the premises; and
 - (c) anything else prescribed by regulation for this subsection.
- (4) For subsection (1) (c), the matters that must be considered in controlling the risks include, for example—
 - (a) implementing, operating, maintaining and repairing systems to ensure the dangerous substance is handled safely; and
 - (b) allocating responsibilities to people involved in the handling of the substance to ensure the substance is handled safely; and
 - (c) appropriately inducting or supervising people handling the substance; and

- (d) giving appropriate information, education and training to people handling the substance about the hazards associated with the substance, and the risks resulting from them; and
- (e) anything else prescribed by regulation.

Examples of systems for par (a)

- 1 safe systems of work and safe handling systems
- 2 security systems for premises where the substance is manufactured or stored
- 3 a system to identify and rectify any incidents of noncompliance (including minimising any risks resulting from the noncompliance) with the safety management system

Part 2.3 Complying with Act

20 **Person may have more than 1 duty under Act**

To remove any doubt, a person may be subject to more than 1 duty under this Act.

Example

A supplier of a dangerous substance must comply with the general safety duty applying to everyone handling a dangerous substance (see s 23) and with the supplier's particular duties under section (2).

If the supplier is a person in control of premises, the supplier must also comply with the safety duties of a person in control of premises (see s 31).

Note 1 A reference to an Act includes a reference to statutory instruments made or in force under the Act, any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

21 **Person not relieved of duty because someone else also has same duty**

- (1) This section applies if 2 or more people have the same duty under this Act.
- (2) To remove any doubt, each person must comply with the duty whether or not someone else may also be required to comply with the duty.

- (3) However, if this Act requires or allows them to do something, it is sufficient if 1 of them does the thing.

Example

If 2 people are in control of premises where a dangerous substance is handled, it is sufficient if 1 of them prepares the safety management system required under section 31 (1). However, if the safety management system is not prepared, each of them is responsible for the failure to comply with the duty to ensure that the safety management system is prepared.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

22 Incorporated documents and approved codes of practice may be considered

An incorporated document or approved code of practice applying to a duty under this Act may be considered in deciding whether a person has complied with the duty.

Note For the meaning of *incorporated document* and *approved code of practice*, see the dictionary.

Chapter 3 Safety duties for dangerous substances

Part 3.1 Safety duties

Division 3.1.1 General safety duty of everyone

23 General safety duty of everyone involved in handling dangerous substances anywhere

- (1) Everyone involved in handling a dangerous substance must take all reasonable steps to minimise the risks resulting from handling the substance.

Note 1 A failure to comply with this section may be an offence (see pt 3.2).

Note 2 **Handling** a dangerous substance includes importing, manufacturing, storing, supplying, possessing, receiving or using the substance (see s 11).

- (2) To remove any doubt, this section applies to the handling of a dangerous substance whether or not the handling is a non-commercial handling of the substance.

Note For the meaning of *non-commercial*, see s 12.

Division 3.1.2 Handling of dangerous substances in trade or commerce

24 Application of div 3.1.2

This division does not apply in relation to the non-commercial handling of a dangerous substance.

Note For the meaning of *non-commercial*, see s 12.

25 Safety management system required for certain people in control of handling dangerous substances

- (1) This section applies to a person in control of—
 - (a) the manufacture, import or supply of a dangerous substance; or
 - (b) any other handling of a dangerous substance prescribed by regulation.
- (2) The person must—
 - (a) ensure that a safety management system for handling the dangerous substance is prepared and documented; and
 - (b) take all reasonable steps to ensure that—
 - (i) the safety management system is implemented and kept up to date; and
 - (ii) everyone to whom the safety management system applies complies with their duties under the system; and
 - (iii) people's compliance with their duties under the safety management system is documented under the system.

Note 1 A failure to comply with this section may be an offence (see pt 3.2).

Note 2 A person in control of premises is also required to have a safety management system for the handling of dangerous substances at the premises (see s 31).

26 Particular safety duties of manufacturers

- (1) A person in control of the manufacture of a dangerous substance must—
 - (a) ensure that the substance is correctly classified as soon as practicable after its manufacture, but before it is supplied to anyone after its manufacture; and

- (b) take all reasonable steps to ensure that the substance is in a condition that is safe for handling by anyone after its manufacture; and
- (c) if the substance is packed by the manufacturer—ensure that the substance is correctly packed and labelled before the manufacturer supplies it to anyone; and
- (d) if the substance is stored by the manufacturer—ensure that the manufacturer correctly stores and placards the substance; and
- (e) ensure that the safety information prescribed by regulation for the substance is prepared, kept up to date and supplied in accordance with the regulations.

Note A failure to comply with this section may be an offence (see pt 3.2).

- (2) Subsection (1) (c) does not require the dangerous substance to be labelled if the substance is not required to be labelled by regulation or an incorporated document.
- (3) Subsection (1) (d) does not require the dangerous substance to be placarded if the substance is not required to be placarded by regulation or an incorporated document.

27 Particular safety duties of importers

- (1) A person in control of the import of a dangerous substance must—
 - (a) ensure that the substance is correctly classified before it is imported; and
 - (b) take all reasonable steps to ensure that the substance is in a condition that is safe for handling by anyone after its import; and
 - (c) if the substance is packed by the importer—ensure that the substance is correctly packed and labelled before the importer supplies it to anyone; and

- (d) if the substance is stored by the importer—ensure that the importer correctly stores and placards the substance; and
- (e) ensure that the safety information prescribed by regulation for the substance is prepared, kept up to date and supplied in accordance with the regulations.

Note 1 A failure to comply with this section may be an offence (see pt 3.2).

Note 2 **Import** means import into the ACT (see dict).

- (2) Subsection (1) (c) does not require the dangerous substance to be labelled if the substance is not required to be labelled by regulation or an incorporated document.
- (3) Subsection (1) (d) does not require the dangerous substance to be placarded if the substance is not required to be placarded by regulation or an incorporated document.

28 Particular safety duties of suppliers

- (1) A person in control of the supply of a dangerous substance must—
 - (a) ensure that the substance is correctly classified before the supplier supplies it to anyone; and
 - (b) take all reasonable steps to ensure that the substance is in a condition that is safe for handling by anyone after the supplier supplies it; and
 - (c) ensure that the substance is correctly packed and labelled before the supplier supplies it to anyone; and
 - (d) if the substance is stored by the supplier—ensure that the supplier correctly stores and placards the substance; and

- (e) ensure that the safety information prescribed by regulation for the substance is prepared, kept up to date, supplied and made available in accordance with the regulations.

Note A failure to comply with this section may be an offence (see pt 3.2).

- (2) Subsection (1) (c) does not require the dangerous substance to be labelled if the substance is not required to be labelled by regulation or an incorporated document.
- (3) Subsection (1) (d) does not require the dangerous substance to be placarded if the substance is not required to be placarded by regulation or an incorporated document.

Division 3.1.3 Premises where dangerous substances are handled in trade or commerce

29 Application of div 3.1.3

- (1) This division does not apply in relation to the non-commercial handling of a dangerous substance at premises.

Note 1 *At* premises includes in or on the premises (see dict).

Note 2 For the meaning of *non-commercial*, see s 12.

- (2) If the premises are residential premises, this division does not apply to the part of the premises used for the non-commercial handling of the substance.

Note *Premises* includes any part of an area of land or a structure or vehicle (see dict).

30 Safety duties of everyone at premises

- (1) Everyone at premises where a dangerous substance is handled must take all reasonable steps to minimise the risks resulting from the handling of the substance at the premises.

Note 1 A failure to comply with this section may be an offence (see pt 3.2).

Note 2 *At* premises includes in or on the premises (see dict).

- (2) A person at premises where a dangerous substance is handled must—
- (a) comply with any requirement applying to the person under any safety management system for the handling of the substance at the premises; and
 - (b) comply with any instructions relating to the safe handling of the substance at the premises given to the person by a responsible person for the substance; and
 - (c) comply with, or otherwise act in accordance with, notices and signs (including placards and warning signs) at the premises relating to safety or the substance; and
 - (d) not remove, alter, damage, deface or cover any current label, notice, sign or placard at the premises relating to safety or the substance; and
 - (e) tell a responsible person for the substance about anything at the premises that the person believes is likely to cause a dangerous occurrence.

Examples of things that might be reported for par (e)

- 1 the misuse of the dangerous substance by someone
- 2 an accident in relation to the handling of the dangerous substance
- 3 faulty equipment used for handling the dangerous substance

4 someone not following the requirements of a safety management system

Note 1 For the meaning of *responsible person*, see s 18.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

31 Safety duties of people in control of premises

- (1) A person in control of premises where a dangerous substance is handled must—
- (a) ensure that a safety management system for handling the substance at the premises is prepared and documented; and
 - (b) take all reasonable steps to ensure that—
 - (i) the safety management system is implemented and kept up to date; and
 - (ii) everyone to whom the safety management system applies complies with their duties under the system; and
 - (iii) people’s compliance with their duties under the safety management system is documented under the system.

Note A failure to comply with this section may be an offence (see pt 3.2).

- (2) A person in control of premises where a dangerous substance is handled must take all reasonable steps to ensure that—
- (a) the premises (including any plant or systems at the premises for handling the substance) are safe to handle the substance; and
 - (b) if the premises, or anything (including plant or equipment) at the premises, is to be disposed of—the premises or thing is, before its disposal, thoroughly cleaned so that it is free from the substance or is otherwise made safe; and

- (c) if the premises, or anything (including plant or equipment) at the premises, is no longer to be used for handling the substance—the premises or thing is thoroughly cleaned so that it is free from the substance or is otherwise made safe.

Note 1 **Premises** includes land or a structure or vehicle and any part of an area of land or a structure or vehicle and **at** premises includes in or on the premises (see dict).

Note 2 For other provisions relevant to the decontamination of land, see the *Environment Protection Act 1997*.

Division 3.1.4 Plant and systems for handling dangerous substances for trade or commerce

32 Application of div 3.1.4

This division (other than section 33) does not apply in relation to plant or a system for the non-commercial handling of a dangerous substance.

Note For the meaning of *non-commercial*, see s 12.

33 General safety duties for plant and systems

- (1) Everyone involved in the design, manufacture, import, supply, installation, commissioning, operation, maintenance, repair, decommissioning, dismantling or disposal of plant or a system for handling a dangerous substance must take all reasonable steps to minimise the risks resulting from the handling of the substance by the plant or system.

Note 1 **Plant** includes a building or other structure (see dict).

Note 2 A failure to comply with this section may be an offence (see pt 3.2).

- (2) A person operating, maintaining or repairing the plant or system must tell a relevant person about—
- (a) anything in relation to the plant or system that the person believes is likely to cause a dangerous occurrence; and
 - (b) anything else that the person believes is a defect in the plant or system.
- (3) To remove any doubt, this section applies to all plant and systems for handling a dangerous substance, whether or not the handling is a non-commercial handling of the substance.
- (4) In this section:
- relevant person*, for plant or a system, means—
- (a) a person in control of the plant or system; or
 - (b) a person in control of the premises where the plant or system is located.

Note For the meaning of *person in control*, see s 17.

34 Safety duties of people in control of plant and systems

- (1) A person in control of plant or a system for handling a dangerous substance must—
- (a) ensure that a safety management system for the handling of the substance by the plant or system is prepared and documented; and
 - (b) take all reasonable steps to ensure that—
 - (i) the safety management system is implemented and kept up to date; and
 - (ii) everyone to whom the safety management system applies complies with their duties under the system; and

- (iii) people's compliance with their duties under the safety management system is documented under the system.

Note A failure to comply with this section may be an offence (see pt 3.2).

- (2) A person in control of plant or a system for handling a dangerous substance must—

- (a) take all reasonable steps to ensure that the plant or system is safe to handle the substance; and
- (b) take all reasonable steps to ensure that the plant or system is installed and operated safely, and appropriately maintained, repaired and tested; and

Note For requirements to provide information about the operation, maintenance and repair of plant or a system, see s 35 (1) (b) and s 36 (b).

- (c) if the person becomes aware of a hazard or defect in relation to the plant or system—
 - (i) take all reasonable steps to ensure that the plant or system is operated, modified, maintained or repaired to eliminate the hazard, correct the defect or minimise the risks resulting from the hazard or defect; and
 - (ii) ensure that the supplier or manufacturer of the plant or system is told about the hazard or defect; and
 - (iii) if the person is not the owner of the plant or system—ensure that the owner of the plant or system is told about the hazard or defect and its significance; and
- (d) if the plant or system, or a part of the plant or system, is to be disposed of—take all reasonable steps to ensure that the plant or system (or part) is, before its disposal, thoroughly cleaned so that it is free from the dangerous substance or is otherwise made safe; and

- (e) if the plant or system, or a part of the plant or system, is no longer to be used to handle the dangerous substance—take all reasonable steps to ensure that the plant or system (or part) is thoroughly cleaned so that it is free from the substance or is otherwise made safe.

35 Safety duties of people in control of design, manufacture, import and supply of plant and systems

- (1) A person in control of the design, manufacture, import or supply of plant or a system for handling a dangerous substance must—
 - (a) take all reasonable steps to ensure that the plant or a system is safe to handle the substance; and
 - (b) if the person is a person in control of the supply of the plant or system—take all reasonable steps to ensure that appropriate information about the safe installation, operation, maintenance and repair of the plant or system is given to—
 - (i) a person in control of the plant or system; and
 - (ii) if the person mentioned in subparagraph (i) is not the owner—the owner of the plant or system; and
 - (c) if the person (the *appropriate person*) becomes aware of a hazard or defect in relation to the plant or system—ensure that the designated person is told—
 - (i) about the hazard or defect and its significance; and
 - (ii) how the plant or system may be operated, modified, maintained or repaired to eliminate the hazard, correct the defect or minimise the risks resulting from the hazard or defect.

Note A failure to comply with this section may be an offence (see pt 3.2).

(2) In this section:

designated person means—

- (a) if the appropriate person is a person in control of the design or import of the plant or system—a person in control of the manufacture of the plant or system; or
- (b) if the appropriate person is a person in control of the manufacture of the plant or system—a person in control of the design or import (if any) of the plant or system; or
- (c) if the appropriate person is a person in control of the supply of the plant or system—
 - (i) a person in control of the manufacture or import (if any) of the plant or system; and
 - (ii) the person to whom the plant or system was supplied.

36 Safety duties of people in control of installation of plant and systems

A person in control of the installation of plant or a system to handle a dangerous substance must—

- (a) take all reasonable steps to ensure that the plant or system is safe to handle the substance; and
- (b) take all reasonable steps to ensure that appropriate information about the safe operation, maintenance and repair of the plant or system is given to—
 - (i) a person in control of the plant or system; and
 - (ii) if the person mentioned in subparagraph (i) is not the owner—the owner of the plant or system; and
- (c) if the person becomes aware of a hazard or defect in relation to the plant or system—ensure that a person in control of the plant or system is told—

- (i) about the hazard or defect and its significance; and
- (ii) how the plant or system may be operated, modified, maintained or repaired to eliminate the hazard, correct the defect or minimise the risks resulting from the hazard or defect.

Note A failure to comply with this section may be an offence (see pt 3.2).

Division 3.1.5 Reporting of dangerous occurrences

37 Application of div 3.1.5

- (1) This division does not apply in relation to the non-commercial handling of a dangerous substance at premises.

Note 1 *At* premises includes in or on the premises (see dict).

Note 2 For the meaning of *non-commercial*, see s 12.

- (2) If the premises are residential premises, this division does not apply to the part of the premises used for the non-commercial handling of the substance.

Note *Premises* includes any part of an area of land or a structure or vehicle (see dict).

38 Meaning of *dangerous occurrence*

In this Act:

dangerous occurrence means any of the following at premises used to handle a dangerous substance:

- (a) an incident causing or creating a substantial risk of—
 - (i) death or serious harm to a person, whether at the premises or elsewhere; or
 - (ii) substantial damage to property or the environment, whether at the premises or elsewhere;

- (b) anything declared by regulation to be a dangerous occurrence;
- (c) any other incident involving a serious and immediate risk of anything mentioned in paragraph (a) or (b).

Examples of incidents

- 1 a spill or other loss of containment of a dangerous substance
- 2 an uncontrolled emission of a dangerous substance
- 3 a fire, explosion or release of energy

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

39 Person in control of premises—safety duty to report actual or likely dangerous occurrences

- (1) If a person in control of premises believes there is a substantial likelihood of a dangerous occurrence happening at the premises, the person must—
 - (a) if the occurrence is likely to cause death or serious harm to a person or substantial damage to property or the environment—tell the chief executive about the person’s belief immediately after the person forms the belief; and
 - (b) in any other case—tell the chief executive about the person’s belief as soon as possible after the person forms the belief or, if a period is prescribed by regulation, within the prescribed period.
- (2) A person in control of premises where a dangerous occurrence has happened must tell the chief executive about the occurrence—
 - (a) if the occurrence causes death or serious harm to a person or substantial damage to property or the environment—immediately after the occurrence happens; and

- (b) in any other case—as soon as possible after the occurrence happens or, if a period is prescribed by regulation, within the prescribed period.

Note A failure to comply with this section may be an offence (see pt 3.2).

Division 3.1.6 Miscellaneous

40 Safety duties do not limit each other

To remove any doubt, a duty under a provision of this part does not limit the duties under another provision of this part.

Note A person may be subject to more than 1 duty under this Act (see s 20).

Part 3.2 Failure to comply with safety duties

41 Meaning of *safety duty* for pt 3.2

In this part:

safety duty means a duty under any of the following provisions:

- section 23 (General safety duty of everyone handling dangerous substances anywhere)
- section 25 (Safety management system required for certain people in control of handling dangerous substances)
- section 26 (Particular safety duties of manufacturers)
- section 27 (Particular safety duties of importers)
- section 28 (Particular safety duties of suppliers)
- section 30 (Safety duties of everyone at premises)
- section 31 (Safety duties of people in control of premises)
- section 33 (General safety duties for plant and systems)
- section 34 (Safety duties of people in control of plant and systems)
- section 35 (Safety duties of people in control of design, manufacture, import and supply of plant and systems)
- section 36 (Safety duties of people in control of installation of plant and systems)
- section 39 (Person in control of premises—safety duty to report actual or likely dangerous occurrences).

42 Failure to comply with safety duty—general offence

- (1) A person commits an offence if—
- (a) the person is required to comply with a safety duty; and
 - (b) the person fails to comply with the safety duty.

Maximum penalty: 100 penalty units.

- (2) Absolute liability applies to subsection (1) (a).
(3) Strict liability applies to subsection (1) (b).

43 Failure to comply with safety duty—exposing people to substantial risk of death or serious harm

- (1) A person commits an offence if—
- (a) the person is required to comply with a safety duty; and
 - (b) the person fails to comply with the safety duty; and
 - (c) the failure exposes anyone to a substantial risk of death or serious harm; and
 - (d) the person either—
 - (i) was reckless about whether the failure would expose anyone to a substantial risk of death or serious harm; or
 - (ii) was negligent about whether the failure would expose anyone to a substantial risk of death or serious harm.

Maximum penalty: 1 500 penalty units, imprisonment for 5 years or both.

- (2) Absolute liability applies to subsection (1) (a).

44 Failure to comply with safety duty—causing death or serious harm to people

- (1) A person commits an offence if—
- (a) the person is required to comply with a safety duty; and
 - (b) the person fails to comply with the safety duty; and
 - (c) the failure causes the death of or serious harm to anyone; and
 - (d) the person either—
 - (i) was reckless about whether the failure would cause the death of or serious harm to anyone; or
 - (ii) was negligent about whether the failure would cause the death of or serious harm to anyone.

Maximum penalty: 2 000 penalty units, imprisonment for 7 years or both.

- (2) Absolute liability applies to subsection (1) (a).

45 Failure to comply with safety duty—exposing property or environment to substantial risk of substantial damage

- (1) A person commits an offence if—
- (a) the person is required to comply with a safety duty; and
 - (b) the person fails to comply with the safety duty; and
 - (c) the failure exposes property or the environment to a substantial risk of substantial damage; and
 - (d) the person either—
 - (i) was reckless about whether the failure would expose property or the environment to a substantial risk of substantial damage; or

- (ii) was negligent about whether the failure would expose property or the environment to a substantial risk of substantial damage.

Maximum penalty: 1 000 penalty units, imprisonment for 3 years or both.

- (2) Absolute liability applies to subsection (1) (a).

46 Failure to comply with safety duty—causing substantial damage to property or environment

- (1) A person commits an offence if—
 - (a) the person is required to comply with a safety duty; and
 - (b) the person fails to comply with the safety duty; and
 - (c) the failure causes substantial damage to property or the environment; and
 - (d) the person either—
 - (i) was reckless about whether the failure would cause substantial damage to property or the environment; or
 - (ii) was negligent about whether the failure would cause substantial damage to property or the environment.

Maximum penalty: 1 500 penalty units, imprisonment for 5 years or both.

- (2) Absolute liability applies to subsection (1) (a).

47 Alternative verdicts for failure to comply with safety duties

- (1) This section applies if, in a prosecution for an offence for a failure to comply with a safety duty, the trier of fact—
 - (a) is not satisfied beyond reasonable doubt that the defendant is guilty of the offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an alternative offence.
- (2) The trier of fact may find the defendant guilty of the alternative offence, but only if the defendant has been given procedural fairness in relation to the finding of guilt.
- (3) In this section:

alternative offence, for an offence mentioned in table 47, column 2, means an offence mentioned in column 3 for the offence.

Table 47 Alternative verdicts

column 1 item	column 2 prosecuted offence	column 3 alternative offence
1	section 42 (which is about failing to comply with a safety duty)	section 63 (Failure to comply with conditions of licence)
2	section 43 (which is about exposing a person to substantial risk of death or serious harm)	section 42 section 63
3	section 44 (which is about causing death or serious harm to a person)	section 42 section 43 section 63

Chapter 3 Safety duties for dangerous substances
Part 3.2 Failure to comply with safety duties

Section 47

column 1 item	column 2 prosecuted offence	column 3 alternative offence
4	section 45 (which is about exposing property or the environment to substantial risk of substantial damage)	section 42 section 63
5	section 46 (which is about causing substantial damage to property or the environment)	section 42 section 45 section 63

Chapter 3A Asbestos

Part 3A.1 Important concepts

47A Meaning of *asbestos* and *asbestos product*

In this Act:

asbestos means the fibrous form of the mineral silicates belonging to the serpentine and amphibole groups of rock-forming minerals, including the following:

- (a) actinolite;
- (b) amosite (brown asbestos);
- (c) anthophyllite;
- (d) chrysotile (white asbestos);
- (e) crocidolite (blue asbestos);
- (f) tremolite;

and includes any asbestos product.

asbestos product means anything that contains asbestos.

Example of asbestos product

a material formed by mixing asbestos fibres with plaster, cellulose, clay or an adhesive product

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 3A.2 The task force

47B Establishment of task force

The Asbestos Assessment Task Force (the *task force*) is established.

47C Members of task force

The task force has the following members:

- (a) the chief executive of each administrative unit, or a representative of the chief executive;
- (b) anyone else appointed by the Minister.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

47D Chairperson of task force

The Minister must appoint a member to be chairperson of the task force.

47E Role of task force

- (1) The role of the task force is to analyse the extent and impact of asbestos in the ACT and prepare a report of the analysis.
- (2) The analysis must—
 - (a) be based on empirical data; and
 - (b) include an assessment of risks of exposure to asbestos; and
 - (c) include strategies for the inspection, reduction and control required for managing risks identified; and

- (d) identify high-risk areas; and
 - (e) for each high-risk area, identify strategies for increasing public awareness about risks associated with asbestos; and
 - (f) make recommendations about the regulations to be made for—
 - section 47J (5) (Liability of owners and occupiers to inform)
 - section 47K (4) (Liability of owners and occupiers to inspect).
- (3) To get empirical data, the task force must arrange for the inspection of a representative sample of buildings.
- (4) The task force may do anything else it considers appropriate to carry out the analysis, and may otherwise carry out the analysis as it considers appropriate.

47F Arrangements for use of inspectors etc

- (1) The task force may arrange with the chief executive to use inspectors to assist the task force with the analysis.
- (2) For the analysis, an inspector may—
- (a) at any reasonable time, enter any premises; and
 - (b) examine anything at the premises; and
 - (c) take samples of anything at the premises that the inspector suspects on reasonable grounds may contain asbestos, without complying with part 6.7 (Taking and analysis of samples).

Note *At* premises includes in or on the premises (see dict).

- (3) In exercising a function under subsection (2) (b) or (c), an inspector must comply with—
- (a) any standards under the building code about the handling of asbestos; and

- (b) any relevant rules or guidelines published by Standards Australia about the handling of asbestos.
- (4) An inspector who enters premises under subsection (2) is taken to have entered the premises under chapter 7 (Enforcement powers) and to be exercising functions under that chapter.

Note The provisions of ch 7 that apply in relation to an inspector include the following:

- s 143 (Production of identity card)
- s 176 (Damage etc to be minimised)
- s 177 (Compensation to be paid in certain circumstances).

47G Report of analysis

- (1) The task force must give the report of the analysis to the Minister by 1 August 2005.
- (2) The Minister must present to the Legislative Assembly, within 5 sitting days after the day the Minister receives the report—
- (a) the report; and
 - (b) a draft of any regulation proposed to be made by the Executive in response to—
 - (i) recommendations made by the task force under section 47E (2) (f); and
 - (ii) any other aspects of the task force's analysis.

47H Expiry—pt 3A.2

This part expires on 31 August 2006.

Part 3A.3 Public education

471 Duty to publish educational material

The Minister must publish educational material to increase public awareness about risks associated with asbestos.

Part 3A.4 Special duties of care for asbestos

47J Liability of owners and occupiers to inform

- (1) This section applies to an owner or occupier of premises if the owner or occupier knows that there is asbestos at the premises.
- (2) The owner or occupier has a duty of care to a relevant person to tell the person, in writing, what the owner or occupier knows about the asbestos at the premises.

Note If a form is approved under s 222 for this provision, the form must be used.

- (3) To remove any doubt, this section does not require an owner or occupier of premises to find out whether there is asbestos, or anything about the location or condition of any asbestos, at the premises.

Example

An owner or occupier is not required to obtain an asbestos report for the premises.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) This section does not affect—
 - (a) common law rules about the liability of owners or occupiers in relation to their premises; or
 - (b) any obligation that an owner or occupier of premises has under any other territory law or contract; or
 - (c) any other duty of care; or
 - (d) any other liability, including any liability of manufacturers.

(5) In this section:

construction service—see the *Construction Occupations (Licensing) Act 2004*, section 6.

occupier, of premises, includes the lessor of premises let under a tenancy if the lessor—

- (a) has an obligation to the tenant to maintain or repair the premises; or
- (b) could exercise a right to enter the premises to carry out maintenance or repairs.

relevant person, for premises, means—

- (a) a person doing relevant work at the premises; or
- (b) a person who is, or is likely to be, a purchaser of the premises; or
- (c) a person who is a tenant of the premises.

relevant work means—

- (a) a construction service; or
- (b) renovation work; or
- (c) work prescribed by regulation.

renovation work includes—

- (a) the structural or non-structural alteration of a building; and
- (b) repairs to a building; and
- (c) the installation or removal of a fixture; and
- (d) work prescribed by regulation.

tenant, for premises, means—

- (a) someone who is a tenant for the premises under the *Leases (Commercial and Retail) Act 2001*, dictionary, definition of *tenant*; or
- (b) someone who is a tenant for the premises under the *Residential Tenancies Act 1997*, section 6, definition of *tenant*; or
- (c) a person prescribed by regulation for this paragraph;

but does not include a person declared by regulation not to be a tenant.

Note Under the definitions of *tenant* in the *Leases (Commercial and Retail) Act 2001* and the *Residential Tenancies Act 1997*, a ‘tenant’ includes a prospective tenant.

U 47K Liability of owners and occupiers to inspect

U Part 3A.5 Other provisions about asbestos

Chapter 4 Licences for dangerous substances

Part 4.1 General—licences

Note 1 A regulation may prescribe when a person is required to hold a licence (or some other form of authority) to handle a dangerous substance (see s 214 (for explosives), s 215 (1) (a) and s 217).

Note 2 If a person handles a dangerous substance without a licence it may be an offence under ch 5.

48 Meaning of *close associate* for ch 4

(1) In this chapter:

close associate—a person is a *close associate* of someone (the *related person*) if—

- (a) the person holds or will hold an executive position (however described) in the related person's business; or
- (b) the chief executive 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.

Note For the meaning of *business*, see the dictionary.

(2) In this section:

executive position—a position (however described) in the related person's business is an *executive position* if the holder of the position 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; and
- (b) alone or with others.

relevant power, in a business, means a power—

- (a) to take part in a directorial, managerial or executive decision for the business; or
- (b) to elect or appoint a person to an executive office in the business.

49 Working out whether person is a *suitable person*

- (1) The chief executive must have regard to the following matters in deciding whether a person is a *suitable person* to be issued with, or continue to hold, a licence:
 - (a) the knowledge, experience and training of the person in relation to the kinds of dangerous substances;
 - (b) whether the person or a close associate of the person, or a corporation of which the person was at the relevant time an executive officer, has supplied information or a document that is false or misleading in a material particular in relation to this Act;

- (c) whether the person or a close associate of the person, or a corporation of which the person was an executive officer, is disqualified under the Act or a corresponding law from holding a licence;
- (d) whether the person or a close associate of the person, or a corporation of which the person was at the relevant time an executive officer—
 - (i) has contravened this Act or a corresponding law, whether or not the person, associate or corporation has been convicted or found guilty of an offence for the contravention; or
 - (ii) has failed to comply with a condition of a licence under this Act or a licence or other authority (however described) under a corresponding law, whether or not the person, associate or corporation has been convicted or found guilty of an offence for the failure;
- (e) any action being taken against the person or a close associate of the person under part 4.4 (Disciplinary action);
- (f) whether the person or a close associate of the person, or a corporation of which the person was at the relevant time an executive officer, has been convicted or found guilty in the ACT or elsewhere, within the 5-year period before the day the application is made, of an offence involving a dangerous substance;
- (g) whether the person or a close associate of the person has been convicted or found guilty in the ACT or elsewhere, within the 5-year period before the day the application is made, of an offence involving—
 - (i) a firearm; or
 - (ii) actual or threatened violence; or

- (iii) fraud or dishonesty;
- (h) whether the person or a close associate of the person has, within the 5-year period before the day the application is made, been subject to a protection order or corresponding protection order (other than an order that has been revoked or for which an appeal against the making of the order has been upheld);
- (i) anything prescribed by regulation.

Note 1 For the meaning of **found guilty**, see the Legislation Act, dict, pt 1.

Note 2 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) In this section:

corresponding protection order means an order (however described) under a law of the Commonwealth, a State, another Territory or New Zealand that has the same effect or substantially the same effect as a protection order.

protection order—see the *Domestic Violence and Protection Orders Act 2001*, dictionary, definition of **final order**.

50 Applications for licences etc to comply with Act

- (1) This section applies to—
- (a) an application for a licence; or
 - (b) an application by a licensee to amend the licence; or
 - (c) any other application prescribed by regulation in relation to a licence.

- (2) The application must include any information or documents (including information or documents verified in a particular way) required by regulation or by a form approved under section 222 for the application.
- (3) The chief executive need not decide the application if it does not include the required information and documents.

51 Power to ask for information from applicants, licensees and others

- (1) In this section:

designated matter means—

- (a) an application for a licence; or
- (b) an application by a licensee to amend the licence; or
- (c) a change of the kind to which section 57 (2) (Licensee to keep chief executive informed) applies; or
- (d) anything else prescribed by regulation.

third party, for an applicant for a licence or a licensee—a person is a *third party* if the chief executive believes on reasonable grounds that the person has an association or connection with the applicant or licensee that is relevant to the consideration of a designated matter.

- (2) The chief executive may, by written notice given to an applicant for a licence or a licensee, ask the person to do 1 or more of the following:
 - (a) give, in accordance with any directions in the notice, stated information (including information in the possession of or under the control of a third party), verified as stated in the notice, that is relevant to the consideration of the designated matter in relation to the person;

- (b) produce, in accordance with any directions in the notice, stated documents (including documents in the possession of or under the control of a third party) relevant to the consideration of the designated matter in relation to the person and allow examination of the documents, the taking of extracts from them and the making of copies of them;
- (c) authorise a third party stated in the notice to comply with a stated request of a kind mentioned in paragraph (a) or (b);
- (d) give the chief executive the authorities and consents that the chief executive asks for to allow the chief executive to obtain from other people information (including financial and other confidential information) that is—
 - (i) about the person or a close associate of the person; and
 - (ii) relevant to the consideration of the designated matter in relation to the person.

Examples for par (a)

- 1 the notice may ask the person to give information by preparing a document in a stated way or by completing a document provided by the chief executive
- 2 the notice may ask the person to give the chief executive information about a close associate and that the information be verified by a statutory declaration

Example for par (b)

a statement supplied by a police officer about the applicant's criminal history (if any)

Example for par (c)

The notice may ask the applicant to authorise the applicant's accountant, or a former close associate, to give the chief executive stated information or documents about the applicant.

Note 1 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

- (3) If the chief executive asks for something under this section in relation to an application, the chief executive need not decide the application until the request is complied with.

Part 4.2 **Issue amendment, replacement and surrender of licences**

52 **Licence application and decision**

- (1) A person may apply to the chief executive for a licence.

Note 1 A fee may be determined under s 221 for this section.

Note 2 If a form is approved under s 222 for an application, the form must be used.

- (2) The chief executive must issue the licence to the person if satisfied that—
- (a) the person is a suitable person to hold the licence; and
 - (b) the person can comply with this Act in relation to the activities to be authorised by the licence.
- (3) The chief executive must refuse to issue the licence if the chief executive is not satisfied about the matters mentioned in subsection (2).

Note Section 50 (3) and s 51 (3) contain exceptions to this section.

53 **Licence conditions**

- (1) The chief executive may include conditions in a licence to protect the health and safety of people, and property and the environment from damage, from hazards associated with, or risks resulting from, the dangerous substances to which the licence applies.
- (2) A licence is subject to—
- (a) any conditions included in the licence by the chief executive; and
 - (b) any conditions prescribed by regulation.

54 Term of licence

- (1) A licence is issued for the period stated in the licence.
- (2) A licence may not be issued for longer than 3 years, or any shorter period prescribed by regulation.

55 Licence not transferable

A licence is not transferable.

56 Form of licence

- (1) A licence must show the following information:
 - (a) the full name of the licensee;
 - (b) if appropriate—
 - (i) details of the premises where the licensee is authorised to carry out activities under the licence; and
 - (ii) the address of the premises or, if the premises are a vehicle, any information prescribed by regulation for the vehicle;
 - (c) the dangerous substances to which the licence relates;
 - (d) the kinds of handling of dangerous substances authorised under the licence (each of which is a *handling authority*);
 - (e) any conditions included in the licence by the chief executive;
 - (f) any exemption given by the Minister or chief executive under this Act that is relevant to the licence;
 - (g) a unique identifying number;
 - (h) when the term of the licence ends.

Example for par (d)

A licence may authorise a person to manufacture a dangerous substance and to import other dangerous substances (the other dangerous substances are necessary

to manufacture the dangerous substance). The licence also authorises the person to store the imported and manufactured dangerous substances and to supply the manufactured dangerous substance.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A licence may also include any other information the chief executive considers appropriate.

57 Licensee to keep chief executive informed

- (1) This section applies if a person believes that there will be a change to anything stated in—
- (a) a licence held by the person; or
 - (b) the application for the licence made by the person; or
 - (c) an application to amend the licence made by the person.

Note If a person fails to comply with this section the chief executive may take disciplinary action under pt 4.4 (see s 67).

- (2) The person must—
- (a) give the chief executive written notice of the change no later than 7 days before the day the change happens; and
 - (b) if the change affects a particular shown on the licence—return the licence to the chief executive with the notice.

Examples of changes

- 1 a change in a licensee's close associates
- 2 a structural change in premises relevant to handling a dangerous substance

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the change affects a particular shown on a licence, the chief executive must amend the licence or issue another licence for the remainder of the period of the licence it replaces.
- (4) However, subsection (3) does not apply if the chief executive is taking, or considering whether to take, action under part 4.4 (Disciplinary action) in relation to the licensee because of the change.

58 Licence—application to amend by licensee

- (1) A licensee may apply to the chief executive to amend the licence.

Examples of amendments

- 1 to amend or revoke a condition included in the licence by the chief executive
- 2 to change the premises where activities may be carried out under the licence

Note 1 A fee may be determined under s 221 for this section.

Note 2 If a form is approved under s 222 for an application, the form must be used.

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The chief executive must amend the licence if, assuming that the application to amend were an application under section 52 (Licence application and decision) for a licence that included the proposed amendment, the chief executive would be required to issue a licence.

Note 1 For the return of the licence to the chief executive, see s 64.

Note 2 Pt 4.1 applies to the consideration of the application.

- (3) If subsection (2) does not apply, the chief executive must refuse the application to amend the licence.

59 Licence—imposition etc of conditions on chief executive’s initiative

- (1) This section applies to a licensee if the chief executive proposes, on the chief executive’s own initiative, to amend the licence to impose a condition, or to amend or revoke a condition included in the licence by the chief executive (the *proposed action*).
- (2) The chief executive must give the licensee a written notice stating—
 - (a) the proposed action; and
 - (b) if the proposed action is to impose a condition—the proposed condition; and
 - (c) if the proposed action is to amend a condition—the condition as proposed to be amended; and
 - (d) an explanation for the proposed action; and
 - (e) that the licensee may, within 14 days after the day the licensee receives the notice, give a written response to the chief executive about the notice.
- (3) In deciding whether to take the proposed action, the chief executive must consider any response given to the chief executive in accordance with the notice.
- (4) The chief executive must give the licensee written notice of the chief executive’s decision.
- (5) If the chief executive decides to take the proposed action, the chief executive’s decision takes effect 14 days after the day when notice of the decision is given to the licensee or, if the notice states a later date of effect, that date.

- (6) If the licence is amended, the chief executive must, as soon as practicable after the licence has been returned to the chief executive, amend the licence or give the licensee a replacement licence showing the amendment.

Note The licensee must return the licence to the chief executive for amendment (see s 64).

- (7) This section does not affect the taking of action under part 4.4 (Disciplinary action).

60 Replacement of licence

- (1) The chief executive may issue a replacement licence to a licensee if satisfied that the licence has been lost, stolen or destroyed.
- (2) For subsection (1), the chief executive may require the licensee to give the chief executive a statement, verified by a statutory declaration signed by the licensee, that the licence has been lost, stolen or destroyed.

Note 1 A fee may be determined under s 221 for this section.

Note 2 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

- (3) A licence issued under this section must be issued for the remainder of the period of the licence it replaces.

61 Surrender of licence

- (1) A licensee may apply to the chief executive to surrender the licensee's licence.
- (2) The licensee must, with the application—
- (a) return the licence to the chief executive; or
 - (b) if the licence has been lost, stolen or destroyed—give the chief executive a statement, verified by a statutory declaration

signed by the licensee, that the licence has been lost, stolen or destroyed.

Note The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

62 Chief executive may ask for information etc from licensee

- (1) This section applies if a change mentioned in section 57 (1) (Licensee to keep chief executive informed) happens in relation to a licence, whether or not the licensee gives notice of the change to the chief executive under section 57.
- (2) To decide whether, because of the change, the licensee has ceased to be a suitable person to hold the licence or has failed, or is failing, to comply with this Act, the chief executive may give the licensee a notice under section 51 (Power to request information from applicants, licensees and others).
- (3) The licensee must comply with a notice given to the licensee under section 51.

Part 4.3 Offences relating to licences

63 Failure to comply with conditions of licence

- (1) A licensee commits an offence if—
 - (a) the licensee's licence is subject to a condition; and
 - (b) the licensee fails to comply with a requirement of the condition.

Maximum penalty: 100 penalty units.

- (2) An offence against this section is a strict liability offence.

64 Return of amended, suspended or cancelled licences

- (1) A licensee commits an offence if—
 - (a) the licensee's licence is—
 - (i) amended under section 58 (Licence—application for amendment by licensee); or
 - (ii) amended under section 59 (Licence—imposition etc of conditions on chief executive's initiative); or
 - (iii) amended, suspended or cancelled under part 4.4 (Disciplinary action); and
 - (b) the licensee fails to return the licence to the chief executive as soon as practicable (but within 7 days) after the day the licensee is told about the chief executive's action.

Maximum penalty: 100 penalty units.

- (2) An offence against this section is a strict liability offence.

65 Pretending to hold licence

- (1) A person commits an offence if the person pretends to be the holder of a licence.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if the person pretends to be authorised to do something under a licence.

Maximum penalty: 100 penalty units.

66 Offence to allow someone else to use licence

A licensee commits an offence if the licensee lets someone else use the licensee's licence.

Maximum penalty: 100 penalty units.

Part 4.4 Disciplinary action

67 Grounds for disciplinary action

The chief executive may take disciplinary action against—

- (a) a licensee, if the chief executive believes, on reasonable grounds, that the licensee—
 - (i) is not, or is no longer, a suitable person to hold a licence; or
 - (ii) has contravened, or is contravening, this Act; or
- Note 1* For the meaning of *suitable person*, see s 49.
- Note 2* For the meaning of *disciplinary action*, see s 68 (3) and (4).
- (b) a former licensee, if the chief executive believes, on reasonable grounds, that the former licensee contravened this Act while holding a licence, whether or not the former licensee has been convicted or found guilty of an offence for the contravention.

68 Taking disciplinary action

- (1) If the chief executive proposes to take disciplinary action in relation to a licensee, or a former licensee, the chief executive must give the person a written notice (a *disciplinary notice*) that—
 - (a) states the proposed action (including any proposed disqualification period, suspension period or amendment of a licence); and
 - (b) states the grounds for the proposed action; and
 - (c) tells the person that the person may, within 14 days after the day the person receives the notice, give a written response to the chief executive about the notice.

- (2) In deciding whether to take disciplinary action, the chief executive must consider any response given to the chief executive in accordance with the notice under subsection (1) (c).
- (3) If the chief executive is satisfied that a ground for taking action under this section has been established in relation to a licensee, the chief executive may do 1 or more of the following (each of which is *disciplinary action*):
- (a) reprimand the licensee;
 - (b) require the licensee to complete a stated course of training to the satisfaction of the chief executive or another stated person;
 - (c) amend the licence, including by imposing a condition on the licence or amending an existing condition;
 - (d) suspend the licence, or a particular handling authority under the licence, for a stated period or until a stated event happens;
 - (e) cancel the licence, or a particular handling authority under the licence;
 - (f) cancel the licence and disqualify the licensee from applying for a licence, or a particular kind of licence for a stated period or until a stated event happens.
- (4) If the chief executive is satisfied that a ground for taking action under this section has been established in relation to a former licensee, the chief executive may do 1 or more of the following (each of which is *disciplinary action*):
- (a) reprimand the former licensee;
 - (b) disqualify the former licensee from applying for a licence, or a particular kind of licence—
 - (i) for a stated period; or

- (ii) until the former licensee completes a stated course of training to the satisfaction of the chief executive or someone else; or
 - (iii) until a stated event happens.
- (5) The chief executive must give the person written notice of the chief executive's decision.
- (6) A decision to take action under subsection (3) or (4) takes effect 14 days after the day when notice of the decision is given to the person or, if the notice states a later date of effect, that date.

Note For the requirement to return of an amended, suspended or cancelled licence to the chief executive, see s 64.

69 Immediate suspension of licence

- (1) This section applies if the chief executive has given, or is considering whether to give, a disciplinary notice to a licensee.
- (2) The chief executive may give the licensee a written notice (an *immediate suspension notice*) suspending the licence or a particular handling authority under the licence.

Note For the meaning of *handling authority*, see s 56 (1) (d).

- (3) However, the chief executive may suspend the licence or handling authority under subsection (2) only if—
- (a) the chief executive has taken into account the circumstances leading to the decision to give or consider giving the disciplinary notice and the grounds stated, or that may be stated, in the disciplinary notice; and
 - (b) the chief executive believes, on reasonable grounds, that it is in the public interest that the licence or handling authority be suspended as soon as practicable before a decision is made whether or not to take action against the licensee under section 68.

- (4) If an immediate suspension notice is given to the licensee, the licensee's licence, or the handling authority, is suspended when the notice is given to the licensee.

Note For the return of the licence to the chief executive, see s 64.

- (5) If the licensee is given an immediate suspension notice because the chief executive is considering whether to give a disciplinary notice to the licensee, the chief executive must, as soon as practicable, give a disciplinary notice to the licensee or tell the licensee in writing that a disciplinary notice will not be given to the licensee.
- (6) An immediate suspension notice ends—
- (a) if the licence is cancelled or suspended under section 68 (3)—when the cancellation or suspension takes effect; or
 - (b) if a condition is imposed on the licence to which the notice relates, or a condition of the licence is amended—when the condition or amended condition takes effect; or
 - (c) in any other case—when the person is given written notice under section 68 (5) of the decision made on the disciplinary notice or the chief executive tells the licensee that a disciplinary notice will not be given to the licensee.

70 Effect of suspension of licence

- (1) A suspended licence or handling authority does not authorise the licensee to carry on an activity authorised by the licence or handling authority during the suspension.
- (2) If the chief executive suspends a licence or handling authority, the licensee is, during the suspension—
- (a) taken not to hold the licence or handling authority; and
 - (b) disqualified from applying for a licence or handling authority of that kind.

- (3) If the chief executive suspends a handling authority under a licence, the licence is taken to be amended under this part to give effect to the suspension.

71 Action by chief executive in relation to amended, suspended or cancelled licence

- (1) If a licence is amended under this part, the chief executive must, as soon as practicable after the licence has been returned to the chief executive, amend the licence or give the licensee a replacement licence showing the amendment.

Note For the requirement to return an amended or suspended licence to the chief executive, see s 64.

- (2) If a licence is suspended under this part and the suspension ends before the end of the term of the licence, the chief executive must return the licence to the licensee.
- (3) If a handling authority under a licence is suspended under this part and the suspension ends before the end of the term of the licence, the chief executive must, as soon as practicable after the licence has been returned to the chief executive, amend the licence or give the licensee a replacement licence that includes the handling authority.

72 Publication of disciplinary decision by chief executive

- (1) If the chief executive takes disciplinary action against a licensee or former licensee, the chief executive may publish the following information in a way that the chief executive considers appropriate:
- (a) particulars that allow the public to identify the licensee or former licensee;
 - (b) details of the disciplinary action;
 - (c) an outline of why the disciplinary action was taken;

- (d) any other information in relation to the disciplinary action and the safety of the dangerous substance concerned that the chief executive considers appropriate.

Examples of publication

- 1 a press release
- 2 an article in a document published by the Territory or a territory authority
- 3 an advertisement in a newspaper circulating in the ACT

Examples for par (a)

- 1 the licensee's name and ACN (if any)
- 2 any name (and, if relevant, ACN) used in the past by the licensee
- 3 the licensee's current and previous business addresses

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, the information may be published only if—
- (a) the time for any review or appeal in relation to the disciplinary action has ended and no application for review or appeal has been made; or
 - (b) an application for review or appeal has been made and—
 - (i) the application is withdrawn, struck out or discontinued or lapses; or
 - (ii) the disciplinary action is confirmed on review and the time for appeal has ended without an application for an appeal being made.
- (3) If the disciplinary action is set aside on review or appeal, the information must not be published.
- (4) If the disciplinary action is changed on review or appeal (for example, different disciplinary action is substituted), this section applies in relation to the action as changed.

- (5) For the *Civil Law (Wrongs) Act 2002*, section 128 (Publication of a proceeding of public concern)—
- (a) the disciplinary action is taken to be a proceeding of public concern; and
 - (b) the information published by the chief executive under this section about the disciplinary action is taken to be a fair report of a proceeding of public concern.

Chapter 5 Other serious offences

Part 5.1 Prohibited and controlled dangerous substances

73 Definitions for ch 5

In this Act:

controlled dangerous substance means an explosive or other dangerous substance declared by regulation to be a controlled dangerous substance.

explosive means a dangerous substance declared by regulation to be an explosive.

prohibited dangerous substance means—

- (a) an explosive declared by regulation to be a prohibited explosive; or
- (b) any other dangerous substance declared by regulation to be a prohibited dangerous substance.

74 Unauthorised manufacture of certain dangerous substances

- (1) A person commits an offence if—
 - (a) the person manufactures a prohibited dangerous substance; and

- (b) the person is not authorised under a licence, or by regulation, to manufacture the substance.

Maximum penalty: 2 000 penalty units, imprisonment for 7 years or both.

- (2) A person commits an offence if—

- (a) the person manufactures a controlled dangerous substance; and
(b) the person is not authorised under a licence, or by regulation, to manufacture the substance.

Maximum penalty: 1 000 penalty units, imprisonment for 4 years or both.

75 Unauthorised import of certain dangerous substances

- (1) A person commits an offence if—

- (a) the person imports a prohibited dangerous substance; and
(b) the person is not authorised under a licence, or by regulation, to import the substance.

Maximum penalty: 2 000 penalty units, imprisonment for 7 years or both.

Note **Import** means import into the ACT (see dict).

- (2) A person commits an offence if—

- (a) the person imports a controlled dangerous substance; and

- (b) the person is not authorised under a licence, or by regulation, to import the substance.

Maximum penalty: 1 000 penalty units, imprisonment for 4 years or both.

76 Unauthorised supply of certain dangerous substances

- (1) A person commits an offence if—
- (a) the person supplies a prohibited dangerous substance to someone else (the *recipient*); and
- (b) the person is not authorised under a licence, or by regulation, to supply the substance to the recipient.

Maximum penalty: 2 000 penalty units, imprisonment for 7 years or both.

- (2) A person commits an offence if—
- (a) the person supplies a controlled dangerous substance to someone else (the *recipient*); and
- (b) the person is not authorised under a licence, or by regulation, to supply the substance to the recipient.

Maximum penalty: 1 000 penalty units, imprisonment for 4 years or both.

- (3) A person commits an offence if—
- (a) the person supplies a prohibited dangerous substance to someone else (the *recipient*); and
- (b) the recipient is not authorised under a licence, or by regulation, to receive the substance; and

- (c) the person is reckless about whether the recipient is authorised under the licence, or by regulation, to receive the substance.

Maximum penalty: 2 000 penalty units, imprisonment for 7 years or both.

- (4) A person commits an offence if—

- (a) the person supplies a controlled dangerous substance to someone else (the *recipient*); and
- (b) the recipient is not authorised under a licence, or by regulation, to receive the substance; and
- (c) the person is reckless about whether the recipient is authorised under the licence, or by regulation, to receive the substance.

Maximum penalty: 1 000 penalty units, imprisonment for 4 years or both.

77 Unauthorised possession of certain dangerous substances

- (1) A person commits an offence if—

- (a) the person possesses a prohibited dangerous substance; and
- (b) the person is not authorised under a licence, or by regulation, to possess the substance.

Maximum penalty: 2 000 penalty units, imprisonment for 7 years or both.

- (2) A person commits an offence if—

- (a) the person possesses a controlled dangerous substance; and

- (b) the person is not authorised under a licence, or by regulation, to possess the substance.

Maximum penalty: 500 penalty units, imprisonment for 2 years or both.

- (3) In this section:

possession, of a dangerous substance by a person, includes—

- (a) the person receiving or obtaining possession of the substance; and
(b) the person having control over the substance; and
(c) the person having joint possession of the substance with someone else.

78 Unauthorised storage of certain dangerous substances

- (1) A person commits an offence if—
- (a) a regulation requires a dangerous substance to be stored in a particular way; and
(b) the person stores the substance; and
(c) the person fails to store the substance in accordance with the regulation.

Maximum penalty: 100 penalty units.

- (2) An offence against this section is a strict liability offence.

79 Unauthorised use of certain dangerous substances

- (1) A person commits an offence if—
- (a) the person uses a prohibited dangerous substance; and

- (b) the person is not authorised under a licence, or by regulation, to use the substance.

Maximum penalty: 2 500 penalty units, imprisonment for 10 years or both.

- (2) A person commits an offence if—
- (a) the person uses a controlled dangerous substance; and
- (b) the person is not authorised under a licence, or by regulation, to use the substance.

Maximum penalty: 750 penalty units, imprisonment for 3 years or both.

80 Unauthorised carrying of certain dangerous substances

- (1) A person commits an offence if—
- (a) a regulation requires a dangerous substance to be carried in a particular way; and
- (b) the person carries the substance; and
- (c) the person fails to carry the substance in accordance with the regulation.

Maximum penalty: 100 penalty units.

- (2) An offence against this section is a strict liability offence.

81 Unauthorised disposal of dangerous substances, plant and systems

- (1) A person commits an offence if—
- (a) a regulation requires a dangerous substance to be disposed of in a particular way; and
- (b) the person disposes of the substance; and

- (c) the person fails to dispose of the substance in accordance with the regulation.

Maximum penalty: 100 penalty units.

- (2) A person commits an offence if—
 - (a) a regulation requires plant or a system used for handling a dangerous substance to be disposed of in a particular way; and
 - (b) the person disposes of the plant or system; and
 - (c) the person fails to dispose of the plant or system in accordance with the regulation.

Maximum penalty: 100 penalty units.

- (3) An offence against this section is a strict liability offence.

82 Unauthorised handling of dangerous substances generally

- (1) A person commits an offence if—
 - (a) a regulation requires a handling of a dangerous substance to be authorised under a licence; and
 - (b) the person handles the substance; and

- (c) the person is not authorised under a licence to handle the substance.

Maximum penalty: 100 penalty units.

Note 1 **Handling** a dangerous substance includes importing, manufacturing, storing, supplying, possessing, receiving or using the substance (see s 11).

Note 2 See the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth) for the transport of dangerous substances (other than explosives, infectious substances and radioactive substances) that are classified as dangerous goods under that Act.

Note 3 Territory laws have no effect to the extent that they are inconsistent with a Commonwealth law (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 28).

- (2) An offence against this section is a strict liability offence.

83 Handling of certain dangerous substances to be notified

- (1) A person in control of the handling of a dangerous substance commits an offence if—
- (a) a regulation requires the handling of the substance to be notified to the chief executive; and
- (b) the person fails to ensure that the chief executive is notified of the handling of the substance in accordance with the regulation.

Maximum penalty: 100 penalty units.

Note **Handling** a dangerous substance includes importing, manufacturing, storing, supplying, possessing, receiving or using the substance (see s 11).

- (2) An offence against this section is a strict liability offence.

84 Certain premises, plant or systems to be registered etc

- (1) A person in control of premises where a dangerous substance is handled commits an offence if—
- (a) a regulation requires the premises to be registered or notified under a regulation; and
 - (b) the person fails to ensure that the premises are registered or notified in accordance with the regulation.

Maximum penalty: 100 penalty units.

- (2) A person in control of plant or a system for handling a dangerous substance commits an offence if—
- (a) a regulation requires the plant or system to be registered or notified under a regulation; and
 - (b) the person fails to ensure that the plant or system is registered or notified in accordance with the regulation.

Maximum penalty: 100 penalty units.

- (3) An offence against this section is a strict liability offence.

Part 5.2 Preservation of site of dangerous occurrence

85 Definitions for pt 5.2

In this part:

authorised person means—

- (a) an inspector; or

Note An *inspector* includes a police officer (see s 207 (1)).

- (b) a person acting in accordance with an inspector's directions; or
- (c) a person giving emergency medical assistance to an injured person; or
- (d) a member of the ambulance service, the fire brigade, the rural fire service or the SES.

site, of a dangerous occurrence at premises, means the part of the premises where the occurrence happened.

site preservation period means the reasonable period notified by the chief executive to a person in control of the premises where a dangerous occurrence has happened or is happening.

U 86 Person in control of premises to preserve site of dangerous occurrence

- (1) A person in control of premises where a dangerous occurrence has happened or is happening commits an offence if the person fails to take all reasonable steps to ensure that the site of the occurrence is not disturbed or interfered with until after the end of the site preservation period.

Maximum penalty: 100 penalty units.

Note 1 An inspector may issue a prohibition notice in relation to the site of a dangerous occurrence (see s 109 (b) (iii)).

Note 2 For the power of a coroner to exercise functions in relation to the site of a dangerous occurrence, see the *Coroners Act 1997*.

- (2) This section does not apply to anything done by an authorised person.
- (3) An offence against this section is a strict liability offence.

87 Unauthorised disturbance or interference with site of dangerous occurrence

- (1) A person commits an offence if—
- (a) a dangerous occurrence has happened or is happening at premises; and
 - (b) the person disturbs or interferes with the site of the occurrence; and
 - (c) the site preservation period for the site has not ended.

Maximum penalty: 100 penalty units.

- (2) This section does not apply to anything done by an authorised person.
- (3) An offence against this section is a strict liability offence.

Chapter 6 Compliance measures

Part 6.1 Information and documents

88 Chief executive may require answers to questions and production of documents

- (1) This section applies if the chief executive believes, on reasonable grounds, that a person (the *relevant person*) may have contravened, or may be contravening, a provision of this Act.

Note A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) The chief executive may, by written notice given to a person (including the relevant person), require the person to attend before the chief executive at a stated reasonable time and place to do either or both of the following:
- (a) answer questions that the chief executive considers necessary to decide whether the relevant person has contravened or is contravening this Act;
 - (b) produce the documents stated in the notice.

Note For how the notice may be served, see the Legislation Act, pt 19.5.

- (3) The chief executive may require a person to produce a document under subsection (2) (b) only if the chief executive considers the production necessary to decide whether the relevant person has contravened or is contravening this Act.

- (4) The notice must—
 - (a) state that the requirement is made under this section; and
 - (b) contain a statement to the effect that failure to comply with the notice is an offence; and
 - (c) if the notice requires the person to answer questions—
 - (i) contain a statement about the effect of section 92 (Privileges against selfincrimination and exposure to civil penalty); and
 - (ii) state that the person may attend with a lawyer.
- (5) To remove any doubt, for this section, a person answers a question if the person explains why the person or an entity did or did not do something.

89 Compliance with notice to produce

- (1) This section applies if a person is required by a notice under section 88 to produce a document but not to answer questions.
- (2) The person is taken to have complied with the requirement to produce the document if the person—
 - (a) does not attend before the chief executive; but
 - (b) gives the document to the chief executive before the time stated for attendance in the notice.

90 Failure to attend before chief executive or produce documents

- (1) A person commits an offence if—
- (a) the person is required by a notice under section 88 to attend and answer questions before the chief executive; and
 - (b) the person fails to attend before the chief executive in accordance with the notice.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person is required by a notice under section 88 to produce a stated document; and
 - (b) the person fails to produce the document.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

91 Attendance before chief executive—offences

- (1) A person commits an offence if—
- (a) the person is required under section 88 to attend and answer questions before the chief executive; and
 - (b) the person attends before the chief executive; and
 - (c) the chief executive requires the person to answer a question; and

(d) the person fails to answer the question.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the person is required by a notice under section 88 to attend and answer questions before the chief executive; and
 - (b) the person attends before the chief executive; and
 - (c) the person fails to continue to attend as reasonably required by the chief executive until excused from further attendance.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

92 Privileges against selfincrimination and exposure to civil penalty

- (1) This section applies if—
- (a) a person is attending before the chief executive in accordance with a requirement under section 88; and
 - (b) the chief executive requires the person to answer a question.
- (2) This section also applies if a person is required by a notice under section 88 to produce a document.
- (3) The person cannot rely on the common law privileges against selfincrimination and exposure to the imposition of a civil penalty to refuse to answer the question or produce the document.

Note The Legislation Act, s 171 deals with client legal privilege.

- (4) However, any information, document or thing obtained, directly or indirectly, because of the giving of the answer or the production of the document is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for an offence

against this part or the Criminal Code, part 3.4 (False or misleading statements, information and documents).

Part 6.2 Compliance agreements

93 Meaning of *relevant responsible person* for pt 6.2

In this part:

relevant responsible person, for a compliance agreement, means the responsible person for a dangerous substance who enters into the agreement.

94 Inspector may seek compliance agreement

- (1) This section applies if an inspector believes, on reasonable grounds, that a provision of this Act has been, is being or may be contravened in relation to a dangerous substance.

Note A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) The inspector may ask a responsible person for the dangerous substance to enter into an agreement (a *compliance agreement*) in relation to the contravention.
- (3) If the responsible person agrees to enter into a compliance agreement, the agreement must—
 - (a) state that it is a compliance agreement under this Act; and
 - (b) state the contravention of this Act in relation to which the agreement is entered into; and
 - (c) state the period for which the agreement is to operate; and
 - (d) state the measures to be taken by the responsible person or anyone else to ensure this Act is complied with and the times within which the measures must be taken; and

- (e) include a statement to the effect that each person who is required to comply with a duty under this Act must comply with the duty whether or not someone else may also be responsible for complying with the duty; and
- (f) be signed by the inspector and the responsible person.

Examples of measures for par (d)

- 1 the dangerous substance is to be handled only by people with a stated qualification
- 2 the substance is to be handled at temperatures below 5°C
- 3 repair or replace particular premises or plant
- 4 develop, implement or amend a safety management system

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The compliance agreement may include anything else the inspector and the relevant responsible person consider appropriate.
- (5) The inspector must give a copy of the compliance agreement to the relevant responsible person.

95 Term of compliance agreement

- (1) A compliance agreement commences when the agreement is signed by the inspector and relevant responsible person, or at any later time stated in the agreement.
- (2) The compliance agreement ends—
 - (a) at the end of the period of operation stated in the agreement; or
 - (b) if the inspector and relevant responsible person agree to extend the period of operation before the end of the stated period—at the end of the extended period.

- (3) If an inspector is satisfied that the compliance agreement has been complied with before it ends, the inspector must revoke the agreement by written notice given to the relevant responsible person.

96 Compliance agreement not admission of fault etc

- (1) This section applies if a responsible person for a dangerous substance enters into a compliance agreement in relation to a contravention of this Act.
- (2) Entering into the compliance agreement—
- (a) is not an express or implied admission of fault or liability by the responsible person in relation to the contravention; and
 - (b) is not relevant to deciding fault or liability in relation to the contravention.
- (3) Also, evidence of the existence or contents of the compliance agreement is not—
- (a) admissible in a civil proceeding as evidence of the fault or liability of a person in relation to the contravention; or
 - (b) admissible in a criminal proceeding in relation to the contravention; or
 - (c) relevant to the taking of action under part 4.4 (Disciplinary action) in relation to the contravention.

Note This section does not prevent the issue of an improvement notice or prohibition notice in relation to the relevant contravention (see Legislation Act, s 44 and s 197).

U 97 Notification and display of compliance agreements

- (1) This section applies to the relevant responsible person for a compliance agreement.
- (2) The person commits an offence if the person fails to—
 - (a) tell each person (an *affected person*) whose work is affected by the measures to be taken under the agreement about the agreement, including the measures; and
 - (b) give a copy of the agreement to each other person in control of each of the premises where an affected person works.

Maximum penalty: 20 penalty units.

- (3) The person commits an offence if the person fails to ensure that a copy of the agreement is displayed, while the agreement is operating, in a prominent place at or near each part of the premises affected by the contravention of this Act in relation to which the agreement was entered into.

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

98 Compliance agreement not to be removed etc

- (1) A person commits an offence if—
 - (a) a copy of a compliance agreement is displayed at a place; and
 - (b) the person removes, alters, damages, defaces or covers the copy while the agreement is operating.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

Part 6.3 Improvement notices

99 Meaning of *relevant responsible person* for pt 6.3

In this part:

relevant responsible person, for an improvement notice, means the person to whom the inspector gives the notice.

100 Giving improvement notices

An inspector may give a notice (an *improvement notice*) to a responsible person for a dangerous substance if the inspector believes, on reasonable grounds, that a person has contravened, is contravening, or is likely to contravene, this Act.

Note 1 For how documents may be served, see the Legislation Act, pt 19.5.

Note 2 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

101 Contents of improvement notices

- (1) An improvement notice may require the relevant responsible person to do 1 or more of the following:
 - (a) put stated premises, plant or a system for handling the dangerous substance into a safe condition, including, for example, by repairing or replacing the premises, plant or system;
 - (b) prepare, implement or amend a safety management system in relation to the handling of the substance;
 - (c) take stated measures to carry out the requirements of a safety management system in relation to the handling of the substance;

- (d) destroy or otherwise dispose of the substance;
- (e) comply with a particular provision of this Act in relation to the handling of the substance;
- (f) do anything else to ensure that this Act is complied with in relation to the substance.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) Also, the improvement notice must—
 - (a) state that it is an improvement notice under this Act; and
 - (b) state the contravention of this Act in relation to which the notice is given; and
 - (c) state the period for complying with the notice; and
 - (d) include a statement to the effect that each person who is required to comply with a duty under this Act must comply with the duty whether or not someone else may also be responsible for complying with the duty.
- (3) The improvement notice may include any other information the inspector considers appropriate.

102 Extension of time for compliance with improvement notices

- (1) This section applies if a responsible person for a dangerous substance has been given an improvement notice.
- (2) An inspector may, by written notice given to the responsible person, extend the compliance period for the improvement notice on the inspector's own initiative or if asked by the responsible person.
- (3) However, the inspector may extend the compliance period only if the period has not ended.

- (4) In this section:

compliance period means the period stated in the improvement notice under section 101 (2) (c), and includes that period as extended under this section.

U 103 Notification and display of improvement notices

- (1) This section applies to the relevant responsible person for an improvement notice.
- (2) The person commits an offence if the person fails to—
- (a) tell each person (an *affected person*) whose work is affected by anything required to be done under the notice about the notice, including the things required to be done under it; and
 - (b) give a copy of the notice to each person in control of each of the premises where an affected person works.

Maximum penalty: 20 penalty units.

- (3) The person commits an offence if the person fails to ensure that a copy of the notice is displayed, while the notice is in force, in a prominent place at or near each part of the premises affected by the contravention of this Act in relation to which the notice was given.

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

104 Improvement notice not to be removed etc

- (1) A person commits an offence if—
- (a) a copy of an improvement notice is displayed at a place; and

- (b) the person removes, alters, damages, defaces or covers the copy while the notice is in force.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

105 Scope of improvement notices

- (1) An improvement notice for a dangerous substance may relate to 1 or more of the following:

- (a) premises, or part of premises, for handling the substance;
- (b) plant or a system for handling the substance;
- (c) handling the substance in a stated way or for a stated purpose.

Note **Premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).

- (2) A requirement in an improvement notice to destroy or otherwise dispose of a dangerous substance may state either or both of the following:

- (a) how the substance must be destroyed or otherwise disposed of;
- (b) how the substance must be kept until it is destroyed or otherwise disposed of.

Note A requirement to destroy or otherwise dispose of a substance may be made under s 101 (1) (d).

106 Revocation of improvement notice on compliance

If an inspector is satisfied that an improvement notice has been complied with, the inspector must revoke the notice by written notice given to the relevant responsible person.

107 Contravention of improvement notices

- (1) The relevant responsible person for an improvement notice commits an offence if the person fails to take all reasonable steps to comply with a requirement of the notice.

Maximum penalty: 100 penalty units.

Note If an improvement notice is given to 2 or more responsible people for a dangerous substance, each of them must comply with the notice (see s 21).

- (2) An offence against this section is a strict liability offence.

Part 6.4 Prohibition notices

U 108 Definitions for pt 6.4

In this part:

basis, for giving a prohibition notice, means—

- (a) the contravention of this Act in relation to which the prohibition notice was given (see section 109 (a)); or
- (b) the risk to be prevented or minimised under the notice (see section 109 (b) (i)); or
- (c) the inspection, testing or monitoring to be allowed under the notice (see section 109 (b) (ii)); or
- (d) the accident or other incident to be investigated under the notice (see section 109 (b) (iii)).

dangerous substance, to which a prohibition notice relates, means the dangerous substance stated in the notice for section 110 (2) (a) (ii).

premises, to which a prohibition notice relates, means premises stated in the notice for section 110 (2) (a) (ii).

relevant responsible person, for a prohibition notice, means the responsible person for a dangerous substance to whom the notice is given.

U 109 Giving prohibition notices

An inspector may give a notice (a *prohibition notice*) to a responsible person for a dangerous substance at premises if the inspector believes, on reasonable grounds—

- (a) that someone at the premises has contravened, is contravening, or is likely to contravene, this Act in relation to the substance; or
- (b) that giving the notice is necessary—
 - (i) to prevent or minimise risk of serious harm to the health or safety of people, or substantial damage to property or the environment, from a hazard at the premises associated with the substance; or
 - (ii) to allow the inspection, testing or monitoring of anything at the premises used in relation to the handling of the substance; or
 - (iii) to allow the investigation of an accident or other incident (including a dangerous occurrence) at the premises in relation to the substance.

Example for par (b) (ii)

to allow for routine compliance testing of plant and systems if the responsible person has not voluntarily agreed to the plant or system being shutdown for the test

Note 1 For how documents may be served, see the Legislation Act, pt 19.5.

Note 2 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

U 110 **Contents of prohibition notices**

- (1) A prohibition notice in relation to a dangerous substance at premises may require a responsible person for the substance not to do 1 or more of the following until the notice ends:
- (a) use stated premises, plant, systems, substances or things;
 - (b) disturb stated premises, plant, systems, substances or things;
 - (c) something else at or in relation to the premises.

Note **Premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).

- (2) Also, the prohibition notice—
- (a) must state the following:
 - (i) that it is a prohibition notice under this Act;
 - (ii) the dangerous substance and premises to which the notice relate;
 - (iii) the basis for giving the notice; and
 - (b) if the notice is given under section 109 (a) or (b) (i) (which are about notices given in relation to contravention of this Act or to prevent or minimise risk of serious harm or substantial damage)—must include a statement to the effect that the relevant responsible person may ask for a reinspection of the situation or circumstances that caused the notice to be given if the person considers that the situation or circumstances comply with this Act; and
 - (c) if the notice is given under section 109 (b) (ii) or (iii) (which are about notices given to allow inspection, testing, monitoring and investigation)—must state the reasonable period that the inspector considers necessary to carry out the inspection, testing, monitoring or investigation to which the notice relates.

U 111 Extension of time for inspection etc

- (1) This section applies if a prohibition notice is given under section 109 (b) (ii) or (iii).
- (2) An inspector may, by written notice given to the relevant responsible person for the prohibition notice, extend the relevant period for the notice on the inspector's own initiative or if asked by the relevant responsible person.
- (3) However, the inspector may extend the relevant period only if the period has not ended.
- (4) In this section:

relevant period means the period stated in the prohibition notice under section 110 (2) (c), and includes that period as extended under this section.

112 Notification and display of prohibition notices

- (1) This section applies to the relevant responsible person for a prohibition notice.
- (2) The person commits an offence if the person fails to—
 - (a) tell each person who works at the premises to which the notice relates about the notice, including anything required not to be done under it; or

- (b) give a copy of the notice to each other responsible person for the dangerous substance to which the notice relates.

Maximum penalty: 20 penalty units.

- (3) The person commits an offence if the person fails to ensure that a copy of the prohibition notice is displayed in a prominent place, at or near each part of the premises to which the notice relates, while the notice is in force.

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

113 Prohibition notice not to be removed etc

- (1) A person commits an offence if—
- (a) a copy of a prohibition notice is displayed at a place; and
 - (b) the person removes, alters, damages, defaces or covers the copy while the notice is in force.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

114 Scope of prohibition notices

A prohibition notice for a dangerous substance may relate to either or both of the following:

- (a) plant or a system for handling the substance;
- (b) handling of the substance in a stated way or for a stated purpose.

U 115 Ending of prohibition notices for contravention of Act etc

- (1) This section applies to a prohibition notice if the notice was given under section 109 (a) or (b) (i) (which are about notices given in

relation to contravention of this Act or to prevent or minimise risk of serious harm or substantial damage).

- (2) The prohibition notice ends when the notice is revoked under section 117.

U 116 Request for reinspection

- (1) This section applies to a prohibition notice given under section 109 (a) or (b) (i).
- (2) The relevant responsible person for the prohibition notice may ask the chief executive, in writing, for a reinspection of the situation or circumstances that caused the notice to be given if the person considers that the situation or circumstances comply with this Act.
- (3) If the request relates to a vehicle or equipment, the vehicle or equipment must be made available for reinspection where it was originally inspected or at another place agreed to by an inspector.

117 Revocation on reinspection

- (1) This section applies if a request has been made under section 116.
- (2) If the inspector who carries out the reinspection is satisfied that there are no grounds for the prohibition notice to continue to operate, the inspector may revoke the notice by written notice given to the relevant responsible person for the prohibition notice.
- (3) Also, the prohibition notice is taken to be revoked on the 3rd business day after the day the request for reinspection is received by the chief executive if—
 - (a) an inspector does not make the reinspection within 2 business days after day the request is received; and
 - (b) the person who made the request is not responsible, completely or partly, for the delay in making the reinspection.

Note For the meaning of **business day**, see the Legislation Act, dict, pt 1.

- (4) Subsection (3) does not prevent an improvement notice or another prohibition notice being given to the same person in relation to the same contravention of this Act.

U 118 **Ending of prohibition notices given for inspection etc**

- (1) This section applies to a prohibition notice if the notice was given under section 109 (b) (ii) or (iii) (which are about notices given to allow inspection, testing, monitoring and investigation).
- (2) The prohibition notice ends at the end of the period stated in the notice under section 110 (2) (c) (Contents of prohibition notices) or, if the period is extended under section 111, the end of the extended period.

U 119 **Contravention of prohibition notices**

- (1) A relevant responsible person for a dangerous substance to which a prohibition notice relates commits an offence if the person fails to take all reasonable steps to ensure the notice is not contravened.

Maximum penalty: 200 penalty units.

- (2) An offence against this section is a strict liability offence.

120 **Request for compensation for prohibition notice**

- (1) This section applies if—
- (a) a prohibition notice is given in relation to premises; and
 - (b) a person suffers loss or expense because of the giving of the notice; and
 - (c) the person considers that there were insufficient grounds for giving the notice.
- (2) The person may apply, in writing, to the Minister for compensation.

- (3) The application must give reasons why the person considers that there were insufficient grounds for giving the prohibition notice.

121 Compensation for prohibition notice

- (1) This section applies if a person applies under section 120 for compensation in relation to the giving of a prohibition notice.
- (2) If, after considering the application, the Minister is satisfied that there were insufficient grounds for giving the prohibition notice, the Territory must pay the person the reasonable compensation decided by the Minister.
- (3) However, compensation is not payable to the person—
 - (a) in relation to any loss or expense suffered by the person because of an act or omission of the person; or
 - (b) if the person caused or contributed to the situation or circumstances that caused the prohibition notice to be given.
- (4) The Minister must give the person written notice of the Minister's decision on the application.
- (5) If the Minister does not decide the application within 28 days after the day the Minister receives the application, the Minister is taken to have refused to pay compensation.

Part 6.5 Enforceable undertakings

122 Definitions for pt 6.5

In this part:

alleged contravention—see section 123 (3) (b).

enforceable undertaking means a safety undertaking that has been accepted under section 124.

relevant person, for an enforceable undertaking, means the person who gave the undertaking.

safety undertaking—see section 123 (2).

123 Making of safety undertakings

- (1) This section applies if the chief executive alleges that a person has contravened a provision of this Act in relation to a dangerous substance.

Note A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) The person may give the chief executive a written undertaking (a *safety undertaking*) to comply with the provision in relation to the substance.
- (3) The safety undertaking must—
 - (a) state that it is an enforceable undertaking under this Act; and
 - (b) acknowledge that the chief executive alleges that the person has contravened a stated provision of this Act (the *alleged contravention*); and

- (c) identify the facts and circumstances of the alleged contravention; and
- (d) include 1 or more undertakings relating to the alleged contravention; and
- (e) include a statement to the effect that each person who is required to comply with a duty under this Act must comply with the duty whether or not someone else may also be responsible for complying with the duty.

Examples of undertakings

- 1 to cease a certain conduct
- 2 to take particular action to compensate people adversely affected by a contravention of this Act
- 3 to take particular action to rectify a state of affairs that arose as a direct or indirect result of the contravention
- 4 to take particular action (including implementing particular systems) to prevent future contraventions of this Act
- 5 to implement publicity or education programs

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

124 Acceptance of safety undertaking

- (1) The chief executive may accept a safety undertaking by written notice given to the person who gave the undertaking.
- (2) On the acceptance of the safety undertaking, the undertaking becomes an enforceable undertaking.

125 Withdrawal from or amendment of enforceable undertaking

- (1) A relevant person for an enforceable undertaking may withdraw from or amend the undertaking only with the chief executive's written agreement.
- (2) However, the enforceable undertaking may not be amended to provide for a different alleged contravention.

126 Term of enforceable undertaking

- (1) A safety undertaking is enforceable from the time it becomes an enforceable undertaking.
- (2) The chief executive may end an enforceable undertaking by written notice to the relevant person for the undertaking if satisfied that the undertaking is no longer necessary or desirable.
- (3) The chief executive may act under subsection (2) on the chief executive's own initiative or on the application of the relevant person for the enforceable undertaking.
- (4) The undertaking ends when the relevant person for the enforceable undertaking receives the chief executive's notice.

127 Safety undertaking not admission of fault etc

- (1) This section applies if a person gives the chief executive a safety undertaking, whether or not the undertaking is accepted by the chief executive.
- (2) Giving the safety undertaking—
 - (a) is not an express or implied admission of fault or liability by the person in relation to the alleged contravention; and
 - (b) is not relevant to deciding fault or liability in relation to the alleged contravention.

128 Contravention of enforceable undertakings

- (1) If the chief executive believes, on reasonable grounds, that an enforceable undertaking has been contravened by anyone, the chief executive may apply to the Magistrates Court for an order under subsection (2).
- (2) If the Magistrates Court is satisfied that the enforceable undertaking has been contravened, the court may make 1 or more of the following orders:
 - (a) an order requiring the relevant person for the undertaking to ensure that the undertaking is not contravened;
 - (b) an order requiring the relevant person for the undertaking to pay to the Territory the amount assessed by the court as the value of the benefits anyone derived, directly or indirectly, from the contravention of the undertaking;
 - (c) an order that the court considers appropriate requiring the relevant person for the undertaking to compensate someone who has suffered loss or damage because of the contravention of the undertaking;
 - (d) any other order that the court considers appropriate.
- (3) A person commits an offence if the person fails to take all reasonable steps to comply with an order under subsection (2).

Maximum penalty: 200 penalty units.
- (4) An offence against this section is a strict liability offence.

Part 6.6 Injunctions

129 Injunctions to restrain offences against Act

- (1) This section applies if a person has committed, is committing, or is likely to commit, an offence against this Act.

Note 1 A reference to an offence against a territory law includes a reference to an offence against the Criminal Code, part 2.4 (Extensions of criminal responsibility) or the *Crimes Act 1900*, section 181 (Accessory after the fact) that relates to the territory law (see Legislation Act, s 189).

Note 2 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) The chief executive or any other interested person may apply to the Magistrates Court for an injunction.
- (3) On application under subsection (2), the Magistrates Court may grant an injunction restraining the person from contravening this Act (including by requiring the person to do something).
- (4) The Magistrates Court may grant the injunction—
- (a) whether or not it appears to the court that the person intends to contravene this Act, contravene this Act again or continue to contravene this Act; and
 - (b) whether or not the person has previously contravened this Act; and
 - (c) whether or not there is a likelihood of the health or safety of a person being affected by, or property or the environment being damaged by, a hazard if the person contravenes this Act; and
 - (d) whether or not a proceeding for an offence against this Act has begun or is about to begin.

- (5) The Magistrates Court may grant an interim injunction restraining the person from committing an offence against this Act (including requiring the person to do something) before deciding an application for an injunction under this section.

130 Enforcement of injunctions

The Magistrates Court has the same powers as the Supreme Court to enforce an injunction (including an interim injunction) made under this part.

131 Amendment or discharge of injunctions

The Magistrates Court may amend or discharge an injunction (including an interim injunction) made under this part on the application of the chief executive or any other interested person.

132 Interim injunctions—undertakings about damages

- (1) If the chief executive applies for an injunction under this part, the Magistrates Court must not require the chief executive to give an undertaking about costs or damages as a condition of granting an interim injunction.
- (2) The Magistrates Court must accept an undertaking from the chief executive about costs or damages, and not require a further undertaking from anyone else, if—
- (a) the applicant for an injunction under this part is not the chief executive; and
 - (b) the court would, apart from this subsection, require the applicant to give an undertaking about costs or damages; and
 - (c) the chief executive gives the undertaking.

133 Magistrates Court's other powers not limited

- (1) The powers given to the Magistrates Court under this part are in addition to any other powers of the court.
- (2) In particular, an application to the Magistrates Court for an injunction under this part may be made without notice to the person against whom the injunction is sought.

Part 6.7 Taking and analysis of samples

134 Inspector may buy samples without complying with pt 6.7

This part does not stop an inspector from buying a sample of a substance for analysis for the routine monitoring of compliance with this Act without complying with the requirements of this part.

Note For the admissibility of the analysis of a sample of a substance taken by an inspector, see s 204.

135 Person in charge etc to be told sample to be analysed

- (1) This section applies if an inspector proposes to take, or takes, a sample of a substance for analysis from premises where a dangerous substance is handled.
- (2) Before or as soon as practicable after taking the sample, the inspector must tell a person in charge of the premises of the inspector's intention to have the sample analysed.
- (3) If a person in charge is not present or readily available, the inspector must instead tell the person from whom the sample was obtained of the inspector's intention to have the sample analysed.

136 Payment for samples

- (1) This section applies if an inspector takes a sample of a substance for analysis from premises where a dangerous substance is handled.
- (2) The inspector must pay, or offer to pay, to the person from whom the sample is taken—
 - (a) the amount (if any) prescribed by regulation as the amount payable for the sample; or
 - (b) if no amount is prescribed—the current market value of the sample.

137 Samples from packaged substances

If a package of a substance contains 2 or more smaller packages of the same substance, the inspector may take 1 of the smaller packages for analysis.

138 Procedures for dividing samples

- (1) This section applies to a sample of a substance being taken by an inspector for analysis and is subject to section 139.
- (2) The inspector must—
 - (a) divide the sample into 3 separate parts, and mark and seal or fasten each part; and
 - (b) leave 1 part with the person told under section 135 (Person in charge etc to be told sample to be analysed) of the inspector's intention to have the sample analysed; and
 - (c) keep 1 of the parts for analysis; and
 - (d) keep 1 part for future comparison with the other parts of the sample.
- (3) If a sample of a substance taken by an inspector is in the form of separate or severable objects, the inspector—
 - (a) may take a number of the objects; and
 - (b) divide them into 3 parts each consisting of 1 or more of the objects, or of the severable parts of the objects, and mark and seal or fasten each part; and
 - (c) deal with the sample under subsection (2) (b) to (d).

139 Exception to s 138

- (1) This section applies to a sample of a substance being taken by an inspector for analysis if dividing the substance into 3 separate parts would, in the inspector's opinion—

- (a) so affect or impair the composition or quality of the sample as to make the separate parts unsuitable for accurate analysis; or
 - (b) result in the separate parts being of an insufficient size for accurate analysis; or
 - (c) otherwise make the sample unsuitable for analysis (including a method of analysis prescribed by regulation for the substance in relation to which the sample was taken).
- (2) The inspector may take as many samples as the inspector considers necessary to allow an accurate analysis to be made, and may deal with the sample or samples in any way that is appropriate in the circumstances, instead of complying with section 138.

140 Certificates of analysis by authorised analysts

- (1) The analysis of a sample of a substance for the chief executive must be carried out by, or under the supervision of, an authorised analyst.
- (2) The authorised analyst must give to the chief executive a certificate of analysis that—
 - (a) is signed and dated by the analyst; and
 - (b) contains a written report of the analysis that sets out the findings; and
 - (c) identifies the method of analysis.

Note 1 If a form is approved under s 222 for the certificate, the form must be used.

Note 2 For the evidentiary status of a certificate under this section, see s 203.

Chapter 7 Enforcement powers

Part 7.1 General

141 Definitions for ch 7

In this chapter:

connected—a thing is **connected** with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

data includes—

- (a) information in any form; and
- (b) a program (or part of a program).

data storage device means a thing containing, or designed to contain, data for use by a computer.

offence includes an offence that there are reasonable grounds for believing has been, is being, or will be, committed.

person assisting, in relation to a search warrant, means a person who has been authorised by an inspector to assist in executing the warrant.

search warrant means a warrant issued under part 7.3 (Search warrants) that is in force.

Part 7.2 General powers of inspectors

142 General power to enter premises

- (1) For this Act, an inspector may—
- (a) at any reasonable time, enter premises that the inspector believes, on reasonable grounds, are—
 - (i) premises used in relation to the handling of dangerous substances; or
 - (ii) premises where there are documents relating to the handling of dangerous substances or plant or a system for handling dangerous substances; or
 - (b) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
 - (c) at any time, enter premises with the consent of a person in charge of the premises; or
 - (d) enter premises in accordance with a search warrant; or
 - (e) at any time, enter premises if the inspector believes, on reasonable grounds, that the circumstances are of such seriousness and urgency as to require immediate entry to the premises without the authority of a search warrant.

Note **Premises** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).

- (2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used only for residential purposes unless that part of the premises is being used in relation to the handling of dangerous substances.

- (3) For subsection (1), an inspector may stop and detain a vehicle that the inspector believes, on reasonable grounds—
- (a) is carrying dangerous substances; or
 - (b) contains documents relating to the handling of dangerous substances or plant or a system for handling dangerous substances.
- (4) For subsection (3), the inspector—
- (a) may direct the driver of the vehicle to move the vehicle to a place (or another place) to which the public has access; and
 - (b) may exercise the inspector's powers in relation to the vehicle at the place; and
 - (c) must not detain the vehicle for longer than is reasonably necessary to exercise the inspector's powers under this chapter.
- (5) An inspector may, without the consent of a person in charge of premises, enter the land around the premises to ask for consent to enter the premises.
- (6) To remove any doubt, an inspector may enter premises under subsection (1) without payment of any entry fee or other charge.
- (7) For subsection (1) (e), the inspector may enter the premises with any necessary assistance and force.
- (8) In this section:
- at any reasonable time*** means at any time—
- (a) for subsection (1) (a) (i)—during normal business hours or any other time when the premises are being used in relation to the handling of dangerous substances; or
 - (b) for subsection (1) (a) (ii)—during normal business hours; or

- (c) for subsection (1) (b)—when the public is entitled to use the premises, or when the premises are open to or used by the public, whether or not on payment of money.

143 Production of identity card

An inspector must not remain at premises entered under this chapter if the inspector does not produce his or her identity card for inspection when asked by a person in charge of the premises.

144 Consent to entry

- (1) When seeking the consent of a person in charge of premises to enter the premises under section 142 (1) (c) (General power to enter premises), an inspector must—
 - (a) produce his or her identity card; and
 - (b) tell the person—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this chapter may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the person in charge consents, the inspector must ask the person to sign a written acknowledgment (an *acknowledgment of consent*)—
 - (a) that the person was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this chapter may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the person consented to the entry; and
 - (c) stating the time and date when consent was given.

- (3) If the person in charge signs an acknowledgment of consent, the inspector must immediately give a copy to the person.
- (4) A court must find that a person in charge of premises did not consent to an entry to the premises by an inspector under this chapter if—
 - (a) the question whether the person consented to the entry arises in a proceeding in the court; and
 - (b) an acknowledgment of consent for the entry is not produced in evidence for the entry; and
 - (c) it is not proved that the person consented to the entry.

145 General powers of inspectors—premises

An inspector who enters premises under this chapter may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:

- (a) examine anything at the premises;
- (b) examine and copy, or take extracts from, documents relating to—
 - (i) the handling of dangerous substances; or
 - (ii) plant or a system used for handling dangerous substances; or
 - (iii) a contravention, or possible contravention, of this Act;
- (c) examine and copy, or take extracts from, any packaging, labelling or advertising material;
- (d) open (or require to be opened) any container or package that the inspector believes, on reasonable grounds—
 - (i) contains a dangerous substance or equipment; or

- (ii) is, or has been, used in relation to the carrying of a dangerous substance;
- (e) open or operate (or require to be opened or operated) plant or a system;
- (f) take for analysis samples of water, soil or anything else that is part of the environment to find out whether the environment poses a risk to the health or safety of people;
- (g) subject to part 6.7 (Taking and analysis of samples), take for analysis samples of anything else (including any substance) at the premises;
- (h) carry out any other examination to find out whether this Act has been, or is being, complied with;
- (i) take measurements, conduct tests and make sketches, drawings or any other kind of record (including photographs, films, or audio, video or other recordings);
- (j) under section 152, seize a thing at the premises;
- (k) take onto the premises any people, equipment or material the inspector reasonably needs to exercise a power under this Act;
- (l) require a person in charge of the premises, or anyone at the premises, to give information, answer questions, or produce documents or anything else, reasonably needed to exercise the inspector's functions under this Act;

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (m) require a person in charge of the premises, or anyone at the premises, to give the inspector reasonable assistance to exercise a function under this chapter.

Note 1 **At** premises includes in or on the premises (see dict).

Note 2 **Examine** includes inspect, weigh, count, test or measure (see dict).

Note 3 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

146 General powers of inspectors for public places

- (1) An inspector may exercise 1 or more of the powers mentioned in section 145 in relation to a substance at a public place if the inspector suspects, on reasonable grounds, that the substance is a dangerous substance.
- (2) This Act applies in relation to the exercise of a power under subsection (1) as if—
 - (a) the public place were premises entered by the inspector under this chapter; and
 - (b) all other necessary changes were made.
- (3) Without limiting subsection (2), if a person is required to do something by an inspector under subsection (1), the person need not comply with the requirement if the inspector does not produce his or her identity card for inspection when asked by the person.
- (4) However, subsection (3) does not apply in relation to an inspector who is a police officer in uniform.

147 Contravention of requirement by inspector

A person must take all reasonable steps to comply with a requirement made of the person under section 145 (l) or (m)

(including a requirement made in relation to a substance at a public place).

Maximum penalty: 50 penalty units.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

148 Power to take action to prevent etc imminent risk

- (1) This section applies if an inspector believes, on reasonable grounds that—
 - (a) there is an imminent risk of serious harm to a person, or of substantial damage to property or the environment, in relation to a dangerous substance at premises or from plant or a system for handling a dangerous substance at the premises; and
 - (b) it is necessary for the inspector to take action without delay to prevent or minimise the risk.
- Note 1* *At* premises includes in or on the premises (see dict).
- Note 2* *Premises* includes any land, structure or vehicle and any part of an area of land, a structure or vehicle (see dict).
- (2) This section applies even if an inspector has given a responsible person for the premises an improvement or prohibition notice in relation to the premises and the time for complying with the notice has not ended.
 - (3) The inspector may take the action the inspector believes, on reasonable grounds, is necessary to prevent or minimise the risk.
 - (4) For subsection (3), the inspector may enter the premises with any necessary assistance and force.
 - (5) In deciding the action to be taken, the inspector must, to the extent that is reasonably practicable, consult with a person in charge of the premises and the chief executive.

- (6) The action an inspector may take includes asking someone the inspector believes, on reasonable grounds, has appropriate knowledge and experience to help the inspector prevent or minimise the risk.
- (7) If an inspector asks someone to help under subsection (6), the person is taken to have the powers of an inspector to the extent reasonably necessary for the person to help prevent or minimise the risk.
- (8) The power to enter premises under this section is additional to the powers under section 142 (General power to enter premises).

149 Report about action under s 148

As soon as practicable after taking action under section 148, an inspector must—

- (a) prepare a report that outlines why the action was taken, the action that was taken and any damage to property because of the action; and
- (b) give a copy of the report to a person in charge of the premises and the chief executive.

150 Recovery of Territory's costs for action under s 148

- (1) This section applies if an inspector takes action under section 148 (3) (Power to take action to prevent etc imminent risk) to prevent or minimise a risk.
- (2) Costs incurred by the Territory in relation to the action are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
 - (a) the person who owned the dangerous substance to which the risk related;

- (b) each person in control of the premises where the action was taken;
 - (c) the person who caused the risk.
- (3) However, costs are not recoverable from a person if the person establishes that—
- (a) the risk was caused by the act or omission of someone other than the person or the person's employee or agent; and
 - (b) reasonable precautions were taken and appropriate diligence was exercised by the person to avoid the act or omission.
- (4) This section does not limit the powers the Territory has apart from this Act.

151 Power of entry etc in relation to dangerous occurrences

- (1) This section applies if an inspector believes, on reasonable grounds, that a dangerous occurrence has happened, is happening or is about to happen at premises.
- (2) The inspector may enter the premises to investigate the dangerous occurrence, ensure the premises are safe and prevent the concealment, loss or destruction of anything reasonably relevant to the investigation of the occurrence.
- (3) For subsection (2), the inspector may enter the premises with any necessary assistance and force.
- (4) The inspector may do anything reasonably necessary for a purpose mentioned in subsection (2).
- (5) If an inspector acts under this section in the absence of a person in charge of the premises, the inspector must, when leaving the premises, leave a written notice, secured in a conspicuous place, setting out—
 - (a) the inspector's name; and

- (b) the time and date of the entry; and
 - (c) the purpose of the entry; and
 - (d) how to contact the inspector.
- (6) The power to enter premises under this section is additional to the powers under section 142 (General power to enter premises).

152 Power to seize things

- (1) An inspector who enters premises under this chapter with the consent of a person in charge of the premises may seize anything at the premises if—
- (a) the inspector is satisfied, on reasonable grounds, that the thing is connected with an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of the entry told to the person when seeking the person's consent.
- (2) An inspector who enters premises under a warrant issued under this chapter may seize anything at the premises that the inspector is authorised to seize under the warrant.
- (3) An inspector who enters premises under this chapter (whether with the consent of a person in charge of the premises, under a warrant or otherwise) may seize anything at the premises if satisfied, on reasonable grounds, that—
- (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) Also, an inspector who enters premises under this chapter (whether with the consent of a person in charge of the premises, under a warrant or otherwise) may seize anything at the premises if satisfied,

on reasonable grounds, that the thing poses a risk to the health or safety of people or of damage to property or the environment.

- (5) The powers of an inspector under subsections (3) and (4) are additional to any powers of the inspector under subsection (1) or (2) or any other territory law.

153 Action in relation to thing seized

- (1) This section applies if an inspector has seized a thing at premises (the *place of seizure*) under section 152.
- (2) The inspector may—
- (a) remove the thing from the place of seizure to another place; or
 - (b) leave the thing at the place of seizure but restrict access to it; or
 - (c) for a thing mentioned in section 154 (1)—destroy or otherwise dispose of the thing under section 154 (5) (Power to destroy unsafe things).

Example of how access may be restricted

The inspector may—

- (a) place the seized thing in a room or other enclosed area, compartment or cabinet at the place of seizure; and
- (b) fasten and seal the door or opening providing access to the room, area, compartment or cabinet; and
- (c) mark the door or opening in a way that indicates that access to it has been restricted under this Act.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A person commits an offence if—
- (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (2); and

- (b) the person does not have an inspector's approval to interfere with the thing.

Maximum penalty: 100 penalty units.

- (4) An offence against this section is a strict liability offence.

154 Power to destroy unsafe things

- (1) This section applies to anything inspected or seized under this chapter by an inspector if the inspector is satisfied, on reasonable grounds, that the thing poses a risk to the health or safety of people or of damage to property or the environment.
- (2) The inspector may require a person in charge of the premises where the thing is to destroy or otherwise dispose of the thing.
- (3) The requirement may state 1 or more of the following:
 - (a) how the thing must be destroyed or otherwise disposed of;
 - (b) how the thing must be kept until it is destroyed or otherwise disposed of;
 - (c) the period within which the thing must be destroyed or otherwise disposed of.

- (4) A person in charge of the premises where the thing is commits an offence if the person contravenes a requirement given to the person under subsection (2).

Maximum penalty: 100 penalty units.

- (5) Alternatively, if the thing has been seized under this chapter, the inspector may destroy or otherwise dispose of the thing.
- (6) Costs incurred by the Territory in relation to the disposal of a thing under subsection (5) are a debt owing to the Territory by, and are recoverable together and separately from, the following people:
 - (a) the person who owned the thing;

(b) each person in control of the premises where the thing was.

(7) An offence against this section is a strict liability offence.

155 Power to require name and address

(1) An inspector may require a person to state the person's name and home address if the inspector suspects, on reasonable grounds, that the person is committing, is about to commit, or has just committed, an offence against this Act.

Note A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

(2) If an inspector makes a requirement of a person under subsection (1), the inspector must—

- (a) tell the person the reasons for the requirement; and
- (b) as soon as practicable, record the reasons.

(3) A person commits an offence if the person contravenes a requirement under subsection (1).

Maximum penalty: 10 penalty units.

(4) However, a person is not required to comply with a requirement under subsection (1) if, when asked by the person, the inspector does not produce his or her identity card for inspection by the person.

(5) Subsection (4) does not apply in relation to an inspector who is a police officer in uniform.

(6) An offence against this section is a strict liability offence.

(7) In this section:

home address, of a person, means the address of the place where the person usually lives.

156 Inspector's power to require production of licence

- (1) This section applies if—
 - (a) an inspector suspects, on reasonable grounds, that the person is handling, is about to handle, or has just handled, a dangerous substance; and
 - (b) a regulation requires the handling to be authorised under a licence.
- (2) The inspector may require the person to produce for inspection any licence that authorises the person to handle the dangerous substance.
- (3) If an inspector makes a requirement of a person under subsection (2), the inspector must—
 - (a) tell the person the reasons for the requirement; and
 - (b) as soon as practicable, record the reasons.
- (4) A person commits an offence if the person contravenes a requirement under subsection (2).

Maximum penalty: 5 penalty units.
- (5) However, a person is not required to comply with a requirement under subsection (2) if, when asked by the person, the inspector does not produce his or her identity card for inspection by the person.
- (6) Subsection (5) does not apply in relation to an inspector who is a police officer in uniform.
- (7) An offence against this section is a strict liability offence.
- (8) In this section:

licence includes an authority (however described) issued under a corresponding law that, under a regulation, authorises a person to handle a dangerous substance.

Part 7.3 Search warrants

157 Warrants generally

- (1) An inspector may apply to a magistrate for a warrant to enter premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and
 - (b) the thing or activity is, or is being engaged in, at the premises, or may be, or may be engaged in, at the premises within the next 14 days.

Note *At* premises includes in or on the premises (see dict).

- (5) The warrant must state—
 - (a) that an inspector may, with any necessary assistance and force, enter the premises and exercise the inspector's powers under this chapter; and
 - (b) the offence for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 14 days after the day of the warrant's issue, that the warrant ends.

(6) In this section:

connected—an activity is ***connected*** with an offence if—

- (a) the offence has been committed by engaging or not engaging in it; or
- (b) it will provide evidence of the commission of the offence.

Note For the meaning of thing ***connected*** with an offence, see s 141.

158 Warrants—application made other than in person

- (1) An inspector may apply for a warrant by phone, fax, radio or other form of communication if the inspector considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is practicable to do so.
- (5) If it is not practicable to fax a copy to the inspector—
 - (a) the magistrate must—
 - (i) tell the inspector what the terms of the warrant are; and
 - (ii) tell the inspector the date and time the warrant was issued; and
 - (b) the inspector must complete a form of warrant (the ***warrant form***) and write on it—
 - (i) the magistrate's name; and

- (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.
- (6) The faxed copy of the warrant, or the warrant form properly completed by the inspector, authorises the entry and exercise of the inspector's powers under this chapter.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by an inspector was not authorised by a warrant under this section if—
 - (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

159 Search warrants—announcement before entry

- (1) An inspector must, before anyone enters premises under a search warrant—
 - (a) announce that the inspector is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and

- (c) if a person in charge of the premises, or someone else who apparently represents the person, is present at the premises—
identify himself or herself to the person.
- (2) The inspector is not required to comply with subsection (1) if the inspector believes, on reasonable grounds, that immediate entry to the premises is required to ensure—
 - (a) the safety of anyone (including the inspector or any person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

160 Details of search warrant to be given to person in charge etc

If a person in charge of the premises, or someone else who apparently represents the person, is present at the premises while a search warrant is being executed, the inspector or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

161 Person in charge entitled to be present during search etc

- (1) If a person in charge of premises, or someone else who apparently represents the person, is present at the premises while a search warrant is being executed, the person in charge or the other person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
 - (a) to do so would impede the search; or
 - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.

- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

162 Moving things to another place for examination or processing

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
- (a) both of the following apply:
- (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
 - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
- (b) a person in charge of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for no longer than 72 hours.
- (3) An inspector may apply to a magistrate for an extension of time if the inspector believes, on reasonable grounds, that the thing cannot be examined or processed within 72 hours.
- (4) The inspector must give notice of the application to a person in charge of the premises, and the person is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the inspector must, if practicable—
- (a) tell a person in charge of the premises the address of the place where, and time when, the examination or processing will be carried out; and

- (b) allow the person or the person's representative to be present during the examination or processing.
- (6) The provisions of this chapter relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

163 Use of electronic equipment at premises

- (1) An inspector or a person assisting may operate electronic equipment at premises entered under a search warrant to access data (including data not held at the premises) if the inspector or person believes, on reasonable grounds, that—
 - (a) the data might be something to which the warrant relates; and
 - (b) the equipment can be operated without damaging the data.
- (2) If the inspector or person assisting believes, on reasonable grounds, that any data accessed by operating the electronic equipment might be something to which the warrant relates, the inspector or person may—
 - (a) copy the data to a data storage device brought to the premises; or
 - (b) if a person in charge of the premises agrees in writing—copy the data to a data storage device at the premises.
- (3) The inspector or person assisting may take the device from the premises.
- (4) The inspector or person assisting may do the following things if the inspector or person finds that anything to which the warrant relates (the *material*) is accessible using the equipment:
 - (a) seize the equipment and any data storage device;

- (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents produced.
- (5) An inspector may seize equipment under subsection (4) (a) only if—
 - (a) it is not practicable to copy the data as mentioned in subsection (2) or to put the material in documentary form as mentioned in subsection (4) (b); or
 - (b) possession of the equipment by a person in charge of the premises or someone else could be an offence.

164 Person with knowledge of computer or computer system to assist access etc

- (1) An inspector may apply to a magistrate for an order requiring a stated person to provide any information or assistance that is reasonably necessary to allow the inspector or a person assisting to do 1 or more of the following:
 - (a) access data held in or accessible from a computer that is at the premises;
 - (b) copy the data to a data storage device;
 - (c) convert the data into documentary form.
- (2) The magistrate may make an order if satisfied that—
 - (a) there are reasonable grounds for suspecting that something to which the warrant relates is accessible from the computer; and
 - (b) the stated person is—
 - (i) reasonably suspected of possessing, or having under the person's control, something to which the warrant relates; or
 - (ii) the owner or lessee of the computer; or

- (iii) an employee or agent of the owner or lessee of the computer; and
- (c) the stated person has knowledge of—
 - (i) the computer or a computer network of which the computer forms a part; or
 - (ii) measures applied to protect data held in or accessible from the computer.
- (3) A person commits an offence if the person contravenes an order under this section.
Maximum penalty: 50 penalty units, imprisonment for 6 months or both.
- (4) The provisions of this chapter relating to the issue of search warrants apply, with any necessary changes, to the making of an order under this section.

165 Securing electronic equipment

- (1) This section applies if the inspector or a person assisting believes, on reasonable grounds, that—
 - (a) something to which the warrant relates (the *material*) may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) the material may be destroyed, altered or otherwise interfered with if the inspector or person does not take action.
- (2) The inspector or person may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (3) The inspector or a person assisting must give written notice to a person in charge of the premises of—

- (a) the inspector's or person's intention to secure the equipment;
and
 - (b) the fact that the equipment may be secured for up to 24 hours.
- (4) The equipment may be secured until the earlier of the following events happens:
- (a) the end of the 24-hour period;
 - (b) the equipment is operated by the expert.
- (5) If the inspector or a person assisting believes on reasonable grounds that the expert assistance will not be available within the 24-hour period, the inspector or person may apply to a magistrate to extend the period.
- (6) The inspector or a person assisting must tell a person in charge of the premises of the intention to apply for an extension, and the person is entitled to be heard on the application.
- (7) The provisions of this chapter relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

166 Copies of seized things to be provided

- (1) This section applies if—
- (a) a person in charge of premises, or someone else who apparently represents the person, is present at the premises while a search warrant is executed; and
 - (b) the inspector seizes—
 - (i) a document, film, computer file or something else that can be readily copied; or
 - (ii) a data storage device containing information that can be readily copied.

- (2) The person in charge or other person may ask the inspector to give the person a copy of the thing or information.
- (3) The inspector must give the person the copy as soon as practicable after the seizure.
- (4) However, the inspector is not required to give the copy if—
 - (a) the thing was seized under section 163 (Use of electronic equipment at premises); or
 - (b) possession of the thing or information by a person in charge of the premises or someone else would be an offence.

Part 7.4 **Return and forfeiture of things seized**

167 **Receipt for things seized**

- (1) As soon as practicable after a thing is seized by an inspector under this chapter, the inspector must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the inspector must leave the receipt, secured conspicuously, at the place of seizure under section 153 (1) (Action in relation to thing seized).
- (3) A receipt under this section must include the following:
 - (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) an explanation of the person's right to apply to a court under section 170 for an order disallowing the seizure;
 - (d) if the thing is removed from the premises where it is seized—where the thing is to be taken to;
 - (e) the inspector's name, and how to contact the inspector.

168 **Access to things seized**

- (1) This section applies to a document or anything else seized under this chapter.
- (2) If asked by a person who would be entitled to inspect the thing if it were not seized under this chapter, an inspector must allow the person, at any reasonable time—

- (a) for a document—to inspect it, take extracts from it or make copies of it; and
 - (b) for anything else—to inspect it.
- (3) This section does not apply to—
- (a) a thing seized under section 152 (4) (which is about the seizure of a thing that poses a risk to the health or safety of people or of damage to property or the environment); or
 - (b) a thing seized under section 163 (Use of electronic equipment at premises); or
 - (c) a thing or information if possession of it by the person otherwise entitled to inspect it would be an offence.

U **169** **Return of things seized**

- (1) A thing seized under this chapter must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, if—
- (a) an infringement notice for an offence connected with the thing is not served on the owner within 1 year after the day of the seizure and either—
 - (i) a prosecution for an offence connected with the thing is not begun within the 1-year period; or
 - (ii) a prosecution for an offence connected with the thing is begun within the 1-year period but the court does not find the offence proved; or
 - (b) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, the infringement notice is withdrawn and—
 - (i) a prosecution for an offence connected with the thing is not begun within the 1-year period; or

- (ii) a prosecution for an offence connected with the thing is begun within the 1-year period but the court does not find the offence proved; or
 - (c) an infringement notice for an offence connected with the thing is served on the owner within 1 year after the day of the seizure, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and—
 - (i) an infringement notice is not laid in the Magistrates Court against the person for the offence within 60 days after the day notice is given under section 132 that liability is disputed; or
 - (ii) the Magistrates Court does not find the offence proved; or
 - (d) before the thing is forfeited to the Territory under section 173 (Forfeiture of seized things), the chief executive—
 - (i) becomes satisfied that there has been no offence against this Act with which the thing was connected; or
 - (ii) decides not to prosecute or serve an infringement notice for the offence.
- (2) However, this section does not apply—
- (a) to a thing seized under section 152 (4) (which is about the seizure of things that pose a risk to the health or safety of people or of damage to property or the environment)); or
 - (b) to a thing if the chief executive believes, on reasonable grounds, that the only practical use of the thing in relation to the premises where it was seized would be an offence against this Act; or
 - (c) to a thing if possession of it by its owner would be an offence.

170 Application for order disallowing seizure

- (1) A person claiming to be entitled to anything seized under this chapter may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.
- (2) However, this section does not apply to a thing seized under section 152 (4) (which is about the seizure of things that pose a risk to the health or safety of people or of damage to property or the environment).
- (3) The application may be heard only if the applicant has served a copy of the application on the chief executive.
- (4) The chief executive is entitled to appear as respondent at the hearing of the application.

171 Order for return of seized thing

- (1) This section applies if a person claiming to be entitled to anything seized under this chapter applies to the Magistrates Court under section 170 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if the court is satisfied that—
 - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
 - (b) the thing is not connected with an offence against this Act; and
 - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.

- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
- (a) an order directing the chief executive to return the thing to the applicant or to someone else that appears to be entitled to it;
 - (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
 - (c) an order about the payment of costs in relation to the application.

172 Adjourment pending hearing of other proceedings

- (1) This section applies to the hearing of an application under section 170 (Application for order disallowing seizure).
- (2) If it appears to the Magistrates Court that the seized thing is required to be produced in evidence in a pending proceeding in relation to an offence against a territory law, the court may, on the application of the chief executive or its own initiative, adjourn the hearing until the end of that proceeding.

173 Forfeiture of seized things

- (1) This section applies if—
- (a) anything seized under this chapter has not been destroyed or otherwise disposed of under section 154 (Power to destroy unsafe things) or returned under section 169 (Return of things seized); and
 - (b) an application for disallowance of the seizure under section 170 (Application for order disallowing seizure)—
 - (i) has not been made within 10 days after the day of the seizure; or

- (ii) has been made within that period, but the application has been refused or has been withdrawn before a decision in relation to the application had been made.
- (2) If this section applies to the seized thing—
 - (a) it is forfeited to the Territory; and
 - (b) it may be sold, destroyed or otherwise disposed of as the chief executive directs.

174 Return of forfeited things

- (1) This section applies to something forfeited under section 173 that has not been disposed of in a way that would prevent its return.
- (2) If the chief executive becomes satisfied that there has been no offence against this Act with which the thing was connected, the chief executive must, as soon as practicable, return the thing to the person from whom it was seized or someone else who appears to the chief executive to be entitled to it.
- (3) On its return, any proprietary and other interests in the thing that existed immediately before its forfeiture are restored.

175 Cost of disposal of things forfeited

- (1) This section applies if—
 - (a) a person is convicted, or found guilty, of an offence against this Act in relation to something forfeited to the Territory under this chapter; and
 - (b) the thing was connected with an offence against this Act; and
 - (c) the person was the owner of the thing immediately before its forfeiture.

Note For the meaning of *found guilty*, see the Legislation Act, dict, pt 1.

- (2) If this section applies, costs incurred by or on behalf of the Territory in relation to the lawful disposal of the thing (including storage costs) are a debt owing to the Territory by the person.

Part 7.5 Other enforcement provisions

176 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this chapter, an inspector must take all reasonable steps to ensure that the inspector, and any person assisting, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an inspector, or a person assisting, damages anything in the exercise or purported exercise of a function under this chapter, the inspector must give written notice of particulars of the damage to the person whom the inspector believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens at premises entered under this chapter in the absence of a person in charge of the premises, the notice may be given by leaving it secured in a conspicuous place at the premises.

177 Compensation to be paid in certain circumstances

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this chapter by an inspector or person assisting.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an order under section 170 (Application for order disallowing seizure); or
 - (c) an offence against this Act brought against the person making the claim for compensation.

- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Chapter 8 Emergency powers

178 **Meaning of *recall order* for ch 8**

In this chapter:

recall order means an emergency order requiring the recall or disposal, or both, of a dangerous substance.

179 **Emergency orders**

The Minister may, in writing, make an order (an *emergency order*) if the Minister believes, on reasonable grounds, that the order is necessary to prevent or minimise a risk of serious harm to the health or safety of people, or substantial damage to property or the environment, from a hazard associated with a dangerous substance.

Note 1 An order may be made in relation to a particular kind of dangerous substance (see Legislation Act, s 48).

Note 2 The power to make an instrument includes the power to amend or repeal the instrument (see Legislation Act, s 46).

180 **Nature of emergency orders**

An emergency order in relation to a dangerous substance may do 1 or more of the following:

- (a) require the publication of warnings, in a form approved by the Minister, that the substance is unsafe;
- (b) prohibit the handling of the substance or particular kinds of handling of the substance, including, for example, the sale of the substance;
- (c) prohibit the advertising of the substance;

- (d) require the recall of the substance if it has been consigned or distributed for sale or sold and state how, and the period within which, the recall is to be conducted;
- (e) require the destruction or other disposal of the substance, and state how the disposal is to be done;
- (f) prohibit absolutely the carrying on of an activity in relation to the substance, or permit the carrying on of the activity only in accordance with conditions stated in the order;
- (g) require the taking and analysis of samples of the substance or of water, soil or anything else that is part of the environment where the activity is or has been engaged in in relation to the substance;
- (h) require that stated methods be used for analysis of any samples required to be taken in accordance with the order.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

181 Special provisions for recall orders

- (1) A recall order in relation to a dangerous substance may require a person bound by the order to tell the public (or a stated part of the public), in a stated way, 1 or more of the following:
 - (a) the substance to be recalled or disposed of;
 - (b) the reasons why the substance is considered to be a hazard;
 - (c) the circumstances in which the substance may cause a risk;
 - (d) procedures for disposing of the substance.
- (2) A person who is required by a recall order to recall a dangerous substance must give written notice to the chief executive of the completion of the recall as soon as practicable after its completion.

- (3) A person bound by a recall order is liable to the Territory for any costs incurred by the Territory in relation to the recall order.

Note The costs may be recovered in a court of competent jurisdiction (see Legislation Act, s 177).

- (4) In a proceeding for the recovery of any costs, a certificate signed by the chief executive stating the amount of the costs, and how they were incurred, is evidence of the matters stated in the certificate.

182 How emergency orders are made

- (1) An emergency order may be addressed to—
- (a) a person or 2 or more people; or
 - (b) a class of people or the general public.

- (2) A copy of an emergency order mentioned in subsection (1) (a) must be served on the person or people to whom it is addressed.

Note For how documents may be served, see the Legislation Act, pt 19.5.

- (3) Notice of an emergency order mentioned in subsection (1) (b) must be published as soon as practicable after the order is made in a newspaper that, in the Minister's opinion, will be most likely to bring the order to the attention of the people to be bound by it.
- (4) The notice must set out the terms of the order and the people to be bound by it.
- (5) An emergency order, when it takes effect, is binding on the person or people to whom it is addressed.
- (6) An emergency order that is served on a person takes effect in relation to the person when it is served on the person.
- (7) An emergency order that is published under subsection (3) takes effect on the day after the day the order's 1st published under that subsection.

- (8) An order ends at the end of 90 days after the day it takes effect unless it is sooner revoked.
- (9) Subsection (8) does not prevent a further order being made in the same terms as an order that has ended.

183 Stay or variation of emergency orders by Supreme Court

- (1) A person bound by an emergency order may apply to the Supreme Court for an order staying or otherwise affecting the operation of the order.
- (2) The Supreme Court may make an order staying or otherwise affecting the operation of an emergency order only if satisfied that the making of the order will not—
 - (a) create or significantly increase the possibility of a risk of serious harm to the health or safety of people, or substantial damage to property or the environment, from a hazard associated with a dangerous substance; or
 - (b) aggravate significantly the harm to the health or safety of people, or damage to property or the environment, from a substantial hazard associated with a dangerous substance.
- (3) In deciding whether to make an order under this section, the Supreme Court must have regard to section 185 (Compensation for emergency order).

184 Failure to comply with emergency order

- (1) A person commits an offence if—
 - (a) the person contravenes a prohibition imposed on the person by an emergency order; or

- (b) the person fails to take all reasonable steps to comply with a direction given by an emergency order.

Maximum penalty: 500 penalty units.

- (2) In this section:

emergency order includes an emergency order as affected by any order of the Supreme Court under section 183.

185 Compensation for emergency order

- (1) This section applies if—
 - (a) an emergency order has been made that binds, or has bound, a person; and
 - (b) the person suffers loss or damage because of the making of the order; and
 - (c) the person considers that there were insufficient grounds to make the order.
- (2) The person may apply, in writing, to the Minister for compensation.
- (3) The application must state the reasons why the person considers that there were insufficient grounds to make the emergency order.
- (4) If, after considering the application, the Minister is satisfied that there were insufficient grounds to make the emergency order, the Territory must pay the person the reasonable compensation decided by the Minister.
- (5) However, compensation is not payable to the person—
 - (a) in relation to any loss or damage suffered by the person because of an act or omission of the person; or
 - (b) if the person caused or contributed to the relevant risk or harm to the health or safety of people or of damage to property or the environment.

- (6) The Minister must give the person written notice of the Minister's decision on the application.
- (7) If the Minister does not decide the application within 28 days after the day the Minister receives the application, the Minister is taken to have refused to pay compensation.

Chapter 9 Administrative review of decisions

186 Application of ch 9

This chapter applies to a decision (a *reviewable decision*)—

- (a) made by the Minister, chief executive or an inspector under this Act; and
- (b) prescribed by regulation for this section.

187 Notice of reviewable decisions

- (1) If the Minister, chief executive or inspector (the *decision-maker*) makes a reviewable decision, the decision-maker must give written notice of the decision to each person prescribed by regulation for the decision.
- (2) The notice must comply with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (3) In particular, the notice must tell the person—
 - (a) whether the person has the right to apply for internal review of the decision or the right to apply to the administrative appeals tribunal for review of the decision, and how the application must be made; and
 - (b) if the person has the right to apply for internal review of the decision—that person has the right to apply to the administrative appeals tribunal for review of the decision on the internal review if the person is dissatisfied with that decision; and

- (c) about the options available under other ACT laws to have the decision reviewed by a court or the ombudsman.

188 Internal review of certain decisions

- (1) This section applies if a regulation declares that a reviewable decision is a decision that is subject to internal review (an *internally reviewable decision*).
- (2) A person whose interests are affected by an internally reviewable decision may apply in writing to the chief executive for internal review of the decision.
- (3) The chief executive must arrange for someone else (the *internal reviewer*) to review the decision.
- (4) However, this section does not apply to a reviewable decision made personally by the Minister or the chief executive.

Note Section 191 (b) provides for AAT review of decisions exempt from internal review.

189 Applications for internal review

- (1) An application for internal review of an internally reviewable decision must be made within—
 - (a) 28 days after the day when the applicant is told about the decision by the decision-maker; or
 - (b) any longer period allowed by the internal reviewer, whether before or after the end of the 28-day period.
- (2) The application must set out the grounds on which internal review of the decision is sought.
- (3) The making of the application for internal review of the decision does not affect the operation of the decision.

190 Internal review

- (1) The internal reviewer must review the internally reviewable decision, and confirm, vary or revoke the decision, within 5 business days after the decision-maker receives the application for internal review of the decision.

Note For the meaning of *business day*, see the Legislation Act, dict, pt 1.

- (2) If the decision is not varied or revoked within the 5-day period, the decision is taken to have been confirmed by the internal reviewer.
- (3) As soon as practicable after reviewing the decision, the internal reviewer must give written notice of the decision on the internal review to the applicant.
- (4) The notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

191 Review of decisions by administrative appeals tribunal

A person may apply to the administrative appeals tribunal for review of—

- (a) a decision made by an internal reviewer; or
- (b) a reviewable decision, other than an internally reviewable decision.

Chapter 10 **Procedural and evidentiary provisions**

Part 10.1 **General provisions about offences against Act**

192 **Acts and omissions of representatives**

(1) In this section:

person means an individual.

representative, of a person, means an employee or agent of the person.

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.

(2) This section applies to a prosecution for any offence against this Act.

(3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—

- (a) the act was done or omission made 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.

- (4) An act done or omitted to be done on behalf of a person by the person's representative within the scope of the representative's actual or apparent authority is also taken to have been done or omitted to be done by the person.
- (5) However, subsection (4) does not apply if the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (6) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (3) or (4).

193 Criminal liability of corporation officers

- (1) This section applies to the following provisions:
 - (a) a provision mentioned in section 41 (Meaning of *safety duty* for pt 3.2);
 - (b) a provision of part 4.3 (Offences relating to licences);
 - (c) a provision of chapter 5 (Other serious offences);
 - (d) section 107 (Contravention of improvement notices);
 - (e) section 119 (Contravention of prohibition notices);
 - (f) section 128 (Contravention of enforceable undertakings).
- (2) An officer of a corporation commits an offence if—
 - (a) the corporation contravenes a provision to which this section applies; and
 - (b) the contravention is an offence against this Act (the *relevant offence*); and
 - (c) the officer was reckless about whether the contravention would happen; and

- (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
- (e) the officer failed to take all reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (3) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (4) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
 - (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
 - (i) that the corporation arranged regular professional assessments of the corporation's compliance with the contravened provision;
 - (ii) that the corporation implemented any appropriate recommendation arising from such an assessment;
 - (iii) that the corporation's employees, agents and contractors had a reasonable knowledge and understanding of the requirement to comply with the contravened provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (5) Subsection (4) does not limit the matters to which the court may have regard.
- (6) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.

194 No defence to claim deterioration of sample

It is not a defence in a proceeding for an offence against this Act for a defendant to claim that any part of a sample kept for future comparison with a sample that has been analysed has, from natural causes, deteriorated, perished or undergone material change.

195 Remedial orders by courts for offences

- (1) This section applies if—
- (a) a person is convicted, or found guilty, of an offence against this Act; and
 - (b) the prosecutor asks the court to make an order under this section; and
 - (c) it appears to the court that the person could partly or completely rectify a state of affairs that arose as a direct or indirect result of the conduct that was the subject of the offence.

Note For the meaning of *found guilty*, see the Legislation Act, dict, pt 1.

- (2) The court may order the person to take any steps that it considers are necessary and appropriate to rectify the state of affairs and that are within the person's power to take.
- (3) If a court makes an order under this section, it may also make any other consequential orders (including orders about costs) that it considers appropriate.

196 Court-directed publicity for offences

If a person is convicted or found guilty of an offence against this Act, the court may direct the person to publish a statement in accordance with the directions of the court in relation to the offence.

197 Publication by chief executive of convictions etc

- (1) This section applies if a person, or a representative of the person, is convicted or found guilty of an offence against this Act in relation to a dangerous substance and—
 - (a) the time for making an appeal against the conviction, or finding of guilt, ends without an application for an appeal being made; or
 - (b) if an appeal is made against the conviction or finding of guilt—
 - (i) the conviction or finding is confirmed on appeal, and the time for making any further appeal in relation to the conviction or finding ends without an application for an appeal being made; or
 - (ii) the appeal is withdrawn, struck out or discontinued or lapses; or
 - (c) if a retrial has been ordered—the time for making an appeal on the retrial ends in accordance with paragraph (a) or (b).
- (2) The chief executive may publish the following information in relation to the conviction or finding of guilt in a way that the chief executive considers appropriate:
 - (a) particulars that allow the public to identify the person;
 - (b) details of the offence;

- (c) the decision of the court and the penalty imposed on the person or a representative of the person (including the forfeiture of anything under this Act);

Examples of publication

- 1 a press release
- 2 an article in a document published by the Territory or a territory authority
- 3 an advertisement in a newspaper circulating in the ACT

Examples for par (a)

- 1 the licensee's name and ACN (if any)
- 2 any name (and, if relevant, ACN) used in the past by the licensee
- 3 the licensee's current and previous business addresses

Note 1 For the meaning of *found guilty*, see the Legislation Act, dict, pt 1.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the conviction or finding of guilt is quashed or set aside on appeal, the information must not be published.
- (4) If the penalty is changed on appeal, this section applies in relation to the penalty as changed.
- (5) In this section:

representative of the person means—

- (a) if the person is an individual—an employee or agent of the person; or
- (b) if the person is a corporation—an employee, agent or executive officer of the person.

198 Court may order costs and expenses

- (1) A court that hears a proceeding for an offence against this Act may make any order it considers appropriate in relation to costs and expenses in relation to the examination, seizure, detention, storage,

analysis (including further analysis), destruction or other disposition of anything the subject of the proceeding.

- (2) This section does not affect any other power of the court to award costs.

199 Court may order forfeiture

A court that convicts a person, or finds a person guilty, of an offence against this Act may order the forfeiture to the Territory of anything that was used in the commission of the offence.

U 200 Notices of noncompliance by territory entities

- (1) This section applies if a territory entity (other than a territory-owned corporation) commits an offence against this Act and the offence is an infringement notice offence.

Note 1 For the meaning of *territory-owned corporation*, see the Legislation Act, dict, pt 1

Note 2 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

- (2) An authorised person for the infringement notice offence may serve a notice of noncompliance on the responsible chief executive for the territory entity.

Note For how documents may be served, see the Legislation Act, pt 19.5.

- (3) The responsible chief executive must include in the chief executive's annual report a statement of the number of notices of noncompliance serviced on the chief executive and matter to which each notice related.

(4) In this section:

annual report means a report under the *Annual Reports (Government Agencies) Act 2004*.

authorised person, for an infringement notice offence, means an authorised person for the infringement notice offence under the *Magistrates Court Act 1930*,

responsible chief executive—see the *Auditor-General Act 1996*, dictionary.

territory entity means an administrative unit or a territory entity under the *Auditor-General Act 1996*.

Part 10.2 Evidentiary provisions

201 Presumptions

In a proceeding for an offence against this Act, it is presumed until the contrary is proved, on the balance of probabilities, that—

- (a) a substance that is part of a batch, lot or consignment of the substance of the same kind or description is representative of all of the substance in the batch, lot or consignment; and
- (b) each part of a sample of a substance divided for analysis for this Act is of uniform composition with every other part of the sample; and
- (c) a person who sold a substance in the conduct of a business and was not the holder of a licence sold the substance as the employee of the licensee; and
- (d) a person who appears from any marking or label on an article, container or package containing a substance for sale to have manufactured, imported, packed or supplied the substance is a person in control of the manufacture, import, packing or supply of the substance.

202 Certificate evidence etc

- (1) This section applies in relation to a proceeding for an offence against this Act.
- (2) A document that appears to be a copy of a licence, approval, notice, order, authority or undertaking under this Act is evidence of the issue or giving of a licence, approval, notice, order, authority or undertaking.

- (3) A certificate that appears to be signed by or on behalf of the chief executive, and that states any of the following matters, is evidence of the matters:
- (a) that there was, or was not, in force a licence, approval, notice, order, authority or undertaking in relation to a stated person or people or premises;
 - (b) that a licence, approval, notice, order, authority or undertaking authorised or required or did not authorise or require a stated activity at a particular time and place;
 - (c) that a licence, approval, notice, order, authority or undertaking was or was not subject to stated conditions;
 - (d) that a substance is or is not a dangerous substance;
 - (e) that a dangerous substance belongs to or does not belong to a particular class or category of dangerous substances;
 - (f) that an explosive is or is not a particular kind of explosive;
 - (g) the receipt or otherwise of a notice, application or payment;
 - (h) that an amount of fees or another amount is payable under this Act by a stated person.
- (4) A certificate that appears to be signed by or on behalf of the chief executive, and states anything prescribed by regulation for this section, is evidence of the thing.
- (5) A certificate mentioned in subsection (3) or (4) may state anything by reference to a date or period.
- (6) A court must accept a certificate or other document mentioned in this section as proof of the matters stated in it if there is no evidence to the contrary.

(7) In this section:

authority includes an appointment as an authorised analyst or inspector.

notice includes a compliance notice, improvement notice or prohibition notice.

order includes an emergency order (including a recall order).

undertaking means an enforceable undertaking under part 6.5.

203 Evidence of analysts

- (1) A certificate of the results of an analysis is admissible in a proceeding for an offence against this Act, and is evidence of the facts stated in it, if a copy of the certificate is served by the party who obtained the analysis on the other party to the proceeding at least 14 days before the day of the hearing.
- (2) However, a court may order, at the request of a party to the proceeding or on its own initiative, that the period mentioned in subsection (1) be reduced to the period stated in the court's order.
- (3) An analyst who carried out an analysis in relation to which a certificate is produced as evidence in a proceeding for an offence against this Act need not be called as a witness in the proceeding by the party producing the certificate unless the court hearing the proceeding orders, at the request of a party to the proceeding or on its own initiative, that the analyst be called as a witness.

204 Admissibility of analysis of sample taken by inspector

The analysis of a sample of a substance taken by an inspector is admissible in evidence in a proceeding for an offence against this Act only if the sample was taken as required or allowed by part 6.7 (Taking and analysis of samples).

205 Power of court to order further analysis

- (1) This section applies if the court before which a person is being prosecuted for an offence against this Act is satisfied that there is a disagreement between the evidence of the analysts for the parties to the proceeding.
- (2) The court may order that the part or parts of a sample kept under section 138 (Procedures for dividing samples) be sent by the chief executive to an independent analyst.
- (3) For subsection (2), the order may require the sample to be sent to a particular analyst or to an analyst agreed to by the parties.
- (4) An analyst who is sent a part or parts of a sample for analysis under this section must make the analysis for the information of the court.
- (5) Subject to section 198 (Court may order costs and expenses), the cost of an analysis under this section is payable by the Territory.

Chapter 11 Administration

206 Inspection of incorporated documents

- (1) This section applies to an incorporated document, or an amendment or replacement of an incorporated document.

Note For the meaning of *incorporated document*, see the dictionary.

- (2) The chief executive must ensure that the document, amendment or replacement is made available for inspection free of charge to the public on business days at reasonable times at the office of an administrative unit administered by the chief executive.
- (3) In this section:
amendment, of an incorporated document—see section 220 (6).

207 Inspectors

- (1) Each of the following is an inspector for this Act:
 - (a) a police officer;
 - (b) a public servant appointed under subsection (2).
- (2) The chief executive may appoint a public servant as an inspector for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

208 Identity cards

- (1) This section applies only to an inspector appointed under section 207 (2).

- (2) The chief executive must give each inspector an identity card that states the person's name and appointment as an inspector, and shows—
- (a) a recent photograph of the person; and
 - (b) the date of issue of the card; and
 - (c) the date of expiry of the card; and
 - (d) anything else prescribed by regulation.
- (3) A person commits an offence if—
- (a) the person ceases to be an inspector; and
 - (b) the person does not return the person's identity card to the chief executive as soon as practicable (but within 7 days) after the day the person ceases to be an inspector.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.

209 Functions of inspectors

The functions of an inspector under this Act include the following:

- (a) to inspect and monitor the handling of dangerous substances and premises, plant and systems for handling dangerous substances;
- (b) to investigate compliance with this Act and incidents adversely affecting the safe handling of a dangerous substance.

210 Appointment of authorised analysts

The chief executive may appoint a person as an authorised analyst for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

211 Secrecy

(1) In this section:

court includes a tribunal or other entity with power to require the production of documents or the answering of questions.

person to whom this section applies means—

- (a) a person who is or has been an inspector; or
- (b) anyone else who has exercised a function under this Act.

produce includes allow access to.

protected information means information obtained under this Act in relation to manufacturing secrets or commercial secrets, working processes or anything else prescribed by regulation.

(2) A person commits an offence if—

- (a) the person is a person to whom this section applies; and
- (b) the person—
 - (i) makes a record of protected information; or
 - (ii) directly or indirectly, divulges or communicates protected information to a person; and

- (c) the record is not made, or the information is not divulged or communicated, in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not prevent a person to whom this section applies from divulging or communicating protected information—
 - (a) with the consent of the person from whom the information was obtained; or
 - (b) to a person administering or enforcing a corresponding law; or
 - (c) to a law enforcement authority.
- (4) A person to whom this section applies need not divulge or communicate protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another Act.

212 Protection from liability

- (1) In this section:

official means—

- (a) the Minister; or
- (b) the chief executive; or
- (c) an inspector; or
- (d) anyone else exercising functions under this Act.

- (2) An official does not incur civil liability for an act or omission done honestly and without negligence for this Act.
- (3) Any civil liability that would, apart from this section, attach to an official attaches instead to the Territory.

Chapter 12 Regulations about dangerous substances

213 Regulations may apply etc instruments

A regulation may apply, adopt or incorporate an instrument, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

214 Scheme for explosives to be prescribed

- (1) The regulations are to provide a scheme for regulating the handling of explosives.
- (2) However, subsection (1) does not require all aspects of the handling of all explosives to be licensed.

Example

a person selling or possessing a distress flare may not be required under the regulations to hold a licence to sell or possess the flare

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A regulation may make provision in relation to explosives, including, for example—
 - (a) the explosives that may or must not be handled, including—
 - (i) the authorisation, control and prohibition of explosives for this Act; and

- (ii) the composition, testing and classification of explosives; and
- (b) the kinds of handling of explosives that must be authorised by a licence or by regulation; and
- (c) the packing, labelling and storage of explosives; and
- (d) the qualifications, training and experience of people to handle explosives; and
- (e) the authorisation of people to handle explosives; and
- (f) the authorisation of vehicles to carry explosives and the routes over which explosives may or must not be carried; and
- (g) the purposes for which, and the circumstances in which, explosives may or must not be handled; and
- (h) the duties of people, including reporting and notification requirements, in relation to explosives; and
- (i) the advertising, display and sale of explosives; and
- (j) the making and keeping of records in relation to explosives and their inspection.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) A regulation may also make provision in relation to dangerous substances, and other substances, that can be used to manufacture explosives.

215 Regulations about licences

- (1) A regulation may make provision in relation to licences for handling dangerous substances, including, for example—
 - (a) prescribing the circumstances in which a licence is required for handling dangerous substances by, for example, the class or

kind of dangerous substance, the kind of handling, the circumstances of the handling or the amount handled; and

- (b) the suitability of a person to be licensed to handle dangerous substances, including—
 - (i) the knowledge, experience and training of the person; and
 - (ii) the testing or examination of a person to decide whether the person is, or continues to be, a suitable person to hold a licence; and
- (c) the suitability of premises (including vehicles) in relation to a licence; and
- (d) the kinds of licences that may be issued and the authority given to a licensee by a particular kind of licence; and
- (e) the conditions of a licence; and
- (f) the creation and publication of registers in relation to licences; and
- (g) authorising a person to handle a prohibited dangerous substance or controlled dangerous substance for research, education or any other purpose.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A regulation may also provide the circumstances in which a licence or other form of authority (however described) to handle a dangerous substance under a corresponding law authorises a person to handle the dangerous substance in the ACT.

216 Regulations about dangerous substances generally

- (1) A regulation may make provision in relation to dangerous substances (including explosives), including, for example—

- (a) the methods and equipment for examining and testing a substance to decide whether the substance is a dangerous substance; and
- (b) the methods and equipment for classifying dangerous substances; and
- (c) the classification of dangerous substances, including the classification (however described) to which a dangerous substance does or does not belong; and
- (d) the advertising, display and sale of dangerous substances; and
- (e) the safe handling of dangerous substances; and
- (f) the authorisation, control, notification and prohibition of the handling of dangerous substances; and
- (g) the containers, plant, premises and systems for handling dangerous substances, including—
 - (i) the suitability of premises (including vehicles) for handling dangerous substances; and
 - (ii) the design, manufacture, construction, supply, installation, operation, maintenance, repair and use of containers, premises, plant and systems for handling dangerous substances; and
 - (iii) the design, siting, construction and management of plant, premises and systems for handling dangerous substances; and
 - (iv) the inspection, examination and testing of containers, plant, premises and systems for handling dangerous substances; and
 - (v) the qualifications and authorisation of people installing, maintaining or repairing containers, plant, premises and systems for handling dangerous substances; and

- (vi) safety requirements and safety procedures in relation to containers, plant, premises and systems for handling dangerous substances; and
- (h) the packing, marking, labelling and packaging of dangerous substances, including—
 - (i) the maximum sizes for containers and packages of dangerous substances; and
 - (ii) the construction and properties of containers and packages for dangerous substances; and
- (i) the preparation, review, supply and making available of safety information about dangerous substances; and
- (j) placarding in relation to dangerous substances, including the placarding of manufacturing and storage facilities and other premises where dangerous substances are handled; and
- (k) safety management systems, including—
 - (i) the preparation, implementation, keeping up to date and documentation of safety management systems; and
 - (ii) the documentation of compliance with duties under safety management systems; and
- (l) the making and keeping of records in relation to dangerous substances (including plant and premises for handling dangerous substances) and their inspection and auditing; and
- (m) the duties of people, including reporting and notification requirements, in relation to dangerous substances; and
- (n) the creation and publication of registers in relation to dangerous substances and premises, plant and systems for handling dangerous substances; and

- (o) the safety procedures to be complied with in relation to premises used to handle dangerous substances.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A regulation may also make provision in relation to substances that can be used to manufacture dangerous substances.

217 Regulations may exempt people, plant or premises from Act

- (1) A regulation may—
 - (a) exempt plant, premises or a person, from this Act; or
 - (b) authorise the chief executive to exempt plant, premises or a person, from this Act.

Note A reference to an Act includes a reference to a provision of an Act (see Legislation Act, s 7 (3)).

- (2) An exemption given by a regulation mentioned in subsection (1) may be conditional.
- (3) A regulation may make provision in relation to the failure to comply with a condition of an exemption (including an exemption under this section).
- (4) A regulation may provide for the chief executive to—
 - (a) suspend the operation of a regulation mentioned in subsection (1) (a) in a certain way or in certain circumstances; or
 - (b) suspend the operation of an exemption given by the chief executive to plant or premises, or a person, in a certain way or in certain circumstances.

Chapter 13 Miscellaneous

218 Minister may exempt people, plant, premises or dangerous substances from Act

- (1) The Minister may, in writing, exempt plant, premises or a person, from this Act.

Note A reference to an Act includes a reference to a provision of an Act (see Legislation Act, s 7 (3)).

- (2) An exemption may be conditional.
- (3) An exemption under subsection (1) has no effect to the extent that it is inconsistent with a regulation.
- (4) An exemption is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

219 Codes of practice

- (1) The Minister may, in writing, approve codes of practice setting out guidelines for this Act.
- (2) An approved code of practice may apply, adopt or incorporate an instrument, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (3) An approval of a code of practice is a disallowable instrument.

Note A disallowable instrument must be notified and presented to the Legislative Assembly, under the Legislation Act.

220 Notification of certain incorporated documents

- (1) This section applies to—
 - (a) an incorporated document; or
 - (b) an amendment of, or replacement for, an incorporated document.

Example of replacement document

a new edition of the incorporated document

Note 1 For the meaning of *incorporated document*, see the dictionary.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The chief executive may prepare a written notice (an *incorporated document notice*) for the incorporated document, amendment or replacement that contains the following information:
 - (a) for an incorporated document—details of the document, including its title, author and date of publication;
 - (b) for a replacement of an incorporated document—details of the replacement, including its title, author and date of publication;
 - (c) for an amendment of an incorporated document—the date of publication of the amendment (or of the document as amended) and a brief summary of the effect of the amendment;
 - (d) for an incorporated document or any amendment or replacement—
 - (i) a date of effect (no earlier than the day after the day of notification of the notice); and
 - (ii) details of how access to inspect the document, amendment or replacement may be obtained under section 206 (Inspection of incorporated documents); and

(iii) details of how copies may be obtained, including an indication of whether there is a cost involved.

(3) An incorporated document notice is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

(4) An incorporated document (other than a document mentioned in section 10 (3) (Meaning of *dangerous substance*) as in effect at the commencement of this section), and any amendment or replacement of an incorporated document, has no effect under this Act unless—

(a) an incorporated document notice is notified in relation to the document, amendment or replacement; or

(b) the document, amendment or replacement is notified under the Legislation Act, section 47 (6).

(5) The Legislation Act, section 47 (7) does not apply in relation to incorporated documents.

(6) In this section:

amendment, of an incorporated document, includes an amendment of a replacement for the incorporated document.

replacement, for an incorporated document, means—

(a) a document that replaces the incorporated document; or

(b) a document (an ***initial replacement***) that replaces a document mentioned in paragraph (a); or

(c) a document (a ***further replacement***) that replaces an initial replacement or any further replacement.

221 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

222 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.

- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

223 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 30 penalty units for offences against a regulation.

224 Review of Act

- (1) The Minister must arrange for a person (the *reviewer*) to review the operation of this Act as soon as practicable after 30 June 2005.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The review must include an assessment of—
 - (a) the effectiveness of this Act in regulating the supply of fireworks in the ACT; and
 - (b) the social and environmental effects, in the ACT and elsewhere, of the use of fireworks supplied in or from the ACT.
- (3) The reviewer must not be a public employee employed in an administrative unit that is responsible for the administration of this Act or the *Occupational Health and Safety Act 1989*.
- (4) The reviewer is not subject to direction by the Minister or the chief executive in carrying out the review.
- (5) The reviewer must give the Minister a written report of the review before 15 January 2006.
- (6) The Minister must present the report to the Legislative Assembly before the end of the Assembly's 3rd sitting day in 2006.
- (7) This section expires on 30 June 2006.

Chapter 14 Consequential and transitional matters

M 226 Existing licences

- (1) Despite the repeal of the *Dangerous Goods Act 1975*, a prescribed former licence is taken to be a licence in force under this Act.
- (2) The prescribed former licence is subject to—
 - (a) any conditions stated in the licence; and
 - (b) any conditions prescribed by regulation.
- (3) If the prescribed former licence has not been ended under this Act, the licence continues in force for the remainder of the term of the licence.
- (4) To remove any doubt, a former explosives licence ends on the commencement of this Act.
- (5) In this section:

former explosives licence means a licence or permit under the *Dangerous Goods Act 1975* that authorised a person to handle (within the meaning of this Act) an explosive within the meaning of that Act.

prescribed former licence means a licence, other than a former explosives licence, in force under the *Dangerous Goods Act 1975* immediately before the commencement of this Act.

228 Transitional regulations

- (1) A regulation may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

- (2) Without limiting the scope of subsection (1), a regulation may prescribe matters necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.
- (3) A regulation made for this section must not be taken to be inconsistent with this Act as far as it can operate concurrently with this Act.
- (4) This section is additional to, and does not limit, section 229.

229 Modification of ch 14's operation

A regulation may modify the operation of this chapter to make provision in relation to any matter that, in the Executive's opinion, is not, or is not adequately, dealt with in this chapter.

231 Expiry of ch 14

This chapter expires 2 years after the day it commences.

U Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- administrative unit
- ambulance service
- chief executive
- contravene
- fail
- fire brigade
- found guilty
- indictable offence (see s 190)
- instrument (see s 14)
- notification (see s 63)
- penalty unit (see s 133)
- rural fire service
- SES
- State.

alleged contravention, for part 6.5 (Enforceable undertakings)—see section 123 (3) (b).

analysis, of a dangerous substance or anything else, includes examining or testing the substance or thing.

approved code of practice means a code of practice approved under section 219 (1).

Australian Dangerous Goods Code—see section 10 (3).

Australian Explosives Code—see section 10 (3).

Australian Standard 1940—see section 10 (3).

at premises includes in or on the premises.

authorised analyst means a person appointed as an authorised analyst under section 210.

authorised person, for part 5.2 (Preservation of site of dangerous occurrence)—see section 85.

basis, for giving a prohibition notice—see section 108.

business includes—

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

carry a dangerous substance or anything else means move the substance or thing by any means.

Examples of carry for a dangerous substance

- 1 moving, transferring or transporting a dangerous substance within a processing system or pipeline
- 2 loading a dangerous substance onto, and unloading the substance from, a vehicle
- 3 driving a vehicle carrying a dangerous substance

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

cause death or injury to a person, or substantial damage to property or the environment, means substantially contribute directly or indirectly to the death, injury or damage.

close associate, of someone, for chapter 4 (Licences for dangerous substances)—see section 48.

compliance agreement—see section 94 (2).

condition, of a licence, includes a condition prescribed by regulation that applies to the licence.

connected, with an offence, for chapter 7 (Enforcement powers)—see section 141.

controlled dangerous substance—see section 73.

correctly—

- (a) classify a dangerous substance—see section 13; and
- (b) pack, store, label or placard a dangerous substance—see section 14.

corresponding law means—

- (a) a law of the Commonwealth, a State, another Territory or New Zealand corresponding, or substantially corresponding, to this Act; or
- (b) a law of the Commonwealth, a State, another Territory or New Zealand that is declared by regulation to be a corresponding law, whether or not the law corresponds, or substantially corresponds, to this Act; or
- (c) the *Dangerous Goods Act 1975*.

dangerous occurrence—see section 38.

dangerous substance—

- (a) for part 6.4 (Prohibition notices)—see section 108; and
- (b) for the Act—see section 10.

data, for chapter 7 (Enforcement powers)—see section 141.

data storage device, for chapter 7 (Enforcement powers)—see section 141.

decision-maker, for chapter 9 (Administrative review of decisions)—see section 187.

disciplinary action—see section 68 (3) and (4).

disciplinary notice—see section 68 (1).

dispose, of a dangerous substance or anything else, includes impound, isolate or destroy the substance or thing.

emergency order—see section 179.

enforceable undertaking, for part 6.5—see section 122.

environment includes the built and natural environment.

examine includes inspect, weigh, count, test and measure.

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

explosive—see section 73.

export a dangerous substance or anything else means export the substance or thing from the ACT.

handle, a dangerous substance—see section 11.

handling authority—see section 56 (1) (d).

hazard—see section 15.

import a dangerous substance or anything else means import the substance or thing into the ACT.

improvement notice—see section 100.

incorporated document means—

- (a) a document mentioned in section 10 (3); or
- (b) an instrument applied, adopted or incorporated by regulation.

infringement notice—see the *Magistrates Court Act 1930*, section 117.

infringement notice offence—see the *Magistrates Court Act 1930*, section 117.

inspector means an inspector under section 207.

install plant or a system includes construct the plant or system.

internally reviewable decision—see section 188 (1).

internal reviewer—see section 188 (3).

licence means a licence issued under this Act.

manufacture a dangerous substance or anything else includes—

- (a) make, remake, alter, break-up, process, recondition or treat the substance or thing; and
- (b) change the substance or thing in a way that affects its properties or performance.

NOHSC approved criteria—see section 10 (3).

NOHSC List of Designated Hazardous Substances—see section 10 (3).

non-commercial, for the handling of a dangerous substance—see section 12.

offence, for chapter 7 (Enforcement powers)—see section 141.

officer, of a corporation, means—

- (a) a director or secretary of the corporation; or
- (b) a person—
 - (i) who makes, or takes part in making, decisions that affect all, or a substantial part, of the business of the corporation; or
 - (ii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper exercise of functions attaching to the person's professional capacity or business relationship with the directors or the corporation); or
- (c) a receiver, or receiver and manager, of the corporation's property; or

-
- (d) an administrator of the corporation; or
 - (e) an administrator of a deed of company arrangement executed by the corporation; or
 - (f) a liquidator of the corporation; or
 - (g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

person assisting, in relation to a search warrant, for chapter 7 (Enforcement powers)—see section 141.

person in charge, of premises, includes—

- (a) a person believed, on reasonable grounds, to be a person in charge of, or the occupier of, the premises and a person apparently in charge of, or the occupier of, the premises; and
- (b) anyone else in control of the premises.

Note ***Premises*** includes any land, structure or vehicle and any part of an area of land, a structure or vehicle.

person in control—see section 17.

plant includes—

- (a) machinery or equipment (including scaffolding), or an appliance, implement or tool; and
- (b) a container used for packing, carrying or storing dangerous substances; and
- (c) a vehicle used for handling a dangerous substance; and
- (d) a component, fitting or accessory for the plant; and
- (e) a building or other structure.

premises—

- (a) includes land or a structure or vehicle and any part of an area of land or a structure or vehicle; and
- (b) to which a prohibition notice relates—see section 108.

prohibited dangerous substance—see section 73.

prohibition notice—see section 109.

reasonable steps, in relation to a risk—see section 16.

recall order, for chapter 8 (Emergency orders)—see section 178.

relevant person, for an enforceable undertaking—see section 122.

relevant responsible person—

- (a) for a compliance agreement—see section 93; and
- (b) for an improvement notice—see section 99; and
- (c) for a prohibition notice—see section 108.

responsible person, for a dangerous substance—see section 18.

reviewable decision—see section 186.

risk—see section 15.

safety duty, for part 3.2 (Failure to comply with safety duties)—see section 41.

safety management system, for handling a dangerous substance—see section 19.

safety undertaking, for part 6.5 (Enforceable undertakings)—see section 123 (2).

search warrant, for chapter 7 (Enforcement powers)—see section 141.

sell includes—

- (a) barter or offer or attempt to sell; and

- (b) possess for sale; and
- (c) advertise for sale (whether directly or indirectly); and
- (d) display for sale; and
- (e) cause or allow to be sold or offered for sale; and
- (f) dispose of in any way for valuable consideration; and
- (g) dispose of to an agent for sale on consignment; and
- (h) give away for the purpose of advertisement or for trade or commerce; and
- (i) sell for the purpose of resale.

serious harm, to a person—see the Criminal Code, dictionary.

site, of a dangerous occurrence at premises, for part 5.2 (Preservation of site of dangerous occurrence)—see section 85.

site preservation period for part 5.2 (Preservation of site of dangerous occurrence)—see section 85.

substance includes a matter, material or thing, whether solid, liquid or gas or in a mixture.

suitable person, for a licence—see section 49.

supply a dangerous substance or anything else includes—

- (a) sell the substance or thing; and
- (b) transfer ownership of, or responsibility for, the substance or thing.

system includes the following:

- (a) a mechanical system;
- (b) an electronic system;
- (c) a computer program;
- (d) a system of work;

- (e) a management system;
- (f) a safety management system;
- (g) a system prescribed by regulation;
- (h) a system that includes any combination of the systems mentioned in paragraphs (a) to (g).

trade or commerce includes a business or professional activity.

vehicle means any kind of vehicle on wheels (including a vehicle used on railways or tramways), and includes an aircraft or vessel used on water.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Dangerous Substances Act 2004 A2004-7

notified LR 19 March 2004

s 1, s 2 commenced 19 March 2004 (LA s 75 (1))

remainder commenced 5 April 2004 (s 2 and CN2004-6)

as modified by

Dangerous Substances (General) Regulation 2004 SL2004-9 pt 5 (as am by SL2004-39; om by SL2004-56 s 605)

notified LR 2 April 2004

s 1, s 2 commenced 2 April 2004 (LA s 75 (1))

pt 5 commenced 5 April 2004 (s 2)

as amended by

Emergencies Act 2004 A2004-28 sch 3 pt 3.7

notified LR 29 June 2004

s 1, s 2 commenced 29 June 2004 (LA s 75 (1))

sch 3 pt 3.7 commenced 1 July 2004 (s 2 (1) and CN2004-11)

Dangerous Substances (General) Amendment Regulations 2004 (No 1) SL2004-39

notified LR 30 August 2004

reg 1, reg 2 commenced 30 August 2004 (LA s 75 (1))

commenced 31 August 2004 (reg 2)

Note This regulation only amends the Dangerous Substances (General) Regulations 2004 SL2004-9.

Dangerous Substances (Asbestos) Amendment Act 2004 A2004-66 ss 4–7 (as am by A2005-3)

notified LR 31 August 2004

s 1, s 2 commenced 31 August 2004 (LA s 75 (1))

s 4 commenced 1 September 2004 (s 2 (1))

s 5 commenced 4 April 2005 (s 2 (3) as am by A2005-3 s 4)

s 6, s 7 awaiting commencement (s 2 (4))

Note 1 default commencement under s 2 (5) for s 6, s 7: 16 January 2006

Note 2 default commencement under LA s 79 does not apply to s 6, s 7

as modified by

Dangerous Substances (General) Regulation 2004 SL2004-56 pt 6.1

notified LR 14 December 2004

s 1, s 2 commenced 14 December 2004 (LA s 75 (1))

pt 6.1 commenced 15 December 2004 (s 2 (1))

as amended by

Dangerous Substances (Asbestos) Amendment Act 2005 A2005-3

notified LR 22 February 2005

s 1, s 2 commenced 22 February 2005 (LA s 75 (1))

s 3, s 4 commenced 23 February 2005 (s 2)

s 10 awaiting commencement (LA s 79A and see A2004-66 s 2 (4))

remainder commenced 4 April 2005 (LA s 79A and see A2004-66 s 2 (3))

Note This Act only amends the Dangerous Substances (Asbestos) Amendment Act 2004 A2004-66.

Domestic Violence and Protection Orders Amendment Act 2005 A2005-13 sch 1 pt 1.6

notified LR 24 March 2005

s 1, s 2 commenced 24 March 2005 (LA s 75 (1))

sch 1 pt 1.6 commenced 25 March 2005 (s 2)

Statute Law Amendment Act 2005 A2005-20 sch 1 pt 1.1, sch 3 pt 3.15

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 1 pt 1.1, sch 3 pt 3.15 commences 2 June 2005 (s 2 (1))

Insurance Authority Act 2005 A2005-24 s 22

notified LR 11 May 2005

s 1, s 2 commenced 11 May 2005 (LA s 75 (1))

s 22 commenced 12 May 2005 (s 2)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Relationship of Act to other laws

s 8 am A2004-28 amdt 3.13

Endnotes

4 Amendment history

Alternative verdicts for failure to comply with safety duties

s 47 table renum R6 LA

Asbestos

ch 3A hdg ins A2004-66 s 4

Important concepts

pt 3A.1 hdg ins A2004-66 s 4

Meaning of asbestos and asbestos product

s 47A ins A2004-66 s 4

The task force

pt 3A.2 hdg ins A2004-66 s 4
exp 31 August 2006 (s 47H)

Establishment of task force

s 47B ins A2004-66 s 4
exp 31 August 2006 (s 47H)

Members of task force

s 47C ins A2004-66 s 4
am A2005-24 s 22
exp 31 August 2006 (s 47H)

Chairperson of task force

s 47D ins A2004-66 s 4
exp 31 August 2006 (s 47H)

Role of task force

s 47E ins A2004-66 s 4
exp 31 August 2006 (s 47H)

Arrangements for use of inspectors etc

s 47F ins A2004-66 s 4
exp 31 August 2006 (s 47H)

Report of analysis

s 47G ins A2004-66 s 4
exp 31 August 2006 (s 47H)

Expiry—pt 3A.2

s 47H ins A2004-66 s 4
exp 31 August 2006 (s 47H)

Public education

pt 3A.3 hdg ins A2004-66 s 4

Duty to publish educational material

s 47I ins A2004-66 s 4

Special duties of care for asbestos

pt 3A.4 hdg ins A2004-66 s 5

-
- Liability of owners and occupiers to inform**
s 47J [ins A2004-66 s 5 \(as am A2005-3 ss 5-9\)](#)
- Liability of owners and occupiers to inspect**
s 47K [ins A2004-66 s 6 \(as am A2005-3 s 10\)](#)
- Other provisions about asbestos**
[pt 3A.5 hdg](#) [ins A2004-66 s 7](#)
- Asbestos reports**
s 47L [ins A2004-66 s 7](#)
- Working out whether person is a *suitable person***
s 49 [am A2005-13 amdt 1.29](#)
- Definitions for pt 5.2**
s 85 [am A2004-28 amdt 3.14](#)
- Person in control of premises to preserve site of dangerous occurrence**
s 86 [am A2005-20 amdt 1.1](#)
- Notification and display of compliance agreements**
s 97 [am A2005-20 amdt 3.127](#)
- Notification and display of improvement notices**
s 103 [am A2005-20 amdt 3.128](#)
- Definitions for pt 6.4**
s 108 [def *basis* sub A2005-20 amdt 1.2](#)
[def *dangerous substances* om A2005-20 amdt 3.129](#)
[def *premises* om A2005-20 amdt 3.129](#)
[sub *relevant responsible person* sub A2005-20 amdt 3.130](#)
- Giving prohibition notices**
s 109 [sub A2005-20 amdt 1.3](#)
- Contents of prohibition notices**
s 110 [am A2005-20 amdt 1.4, amdt 1.5](#)
- Extension of time for inspection etc**
s 111 [am A2005-20 amdt 1.6](#)
- Ending of prohibition notices for contravention of Act etc**
s 115 [am A2005-20 amdt 1.7](#)
- Request for reinspection**
s 116 [am A2005-20 amdt 1.8](#)
- Ending of prohibition notices given for inspection etc**
s 118 [am A2005-20 amdt 1.9](#)
- Contravention of prohibition notices**
s 119 [am A2005-20 amdt 3.131, amdt 3.132](#)

Endnotes

4 Amendment history

Return of things seized

s 169 [am A2005-20 amdt 3.133](#)

Notices of noncompliance by territory entities

s 200 [am A2005-20 amdt 3.134](#)

Review of Act

s 224 [exp 30 June 2006 \(s 224 \(7\)\)](#)

Consequential and transitional matters

ch 14 hdg [exp 5 April 2006 \(s 231\)](#)

Repeals

s 225 om LA s 89 (3)

Existing licences

s 226 mod SL2004-9 reg 251 (as am by SL2004-39 reg 5; om by SL2004-56 s 605)
mod SL2004-56 s 601
[exp 5 April 2006 \(s 231\)](#)

Existing shotfirers' permits

s 226A ins as mod SL2004-9 reg 253
[exp 15 May 2004 \(s 226A \(5\)\)](#)

Existing general public display fireworks permits

s 226B ins as mod SL2004-9 reg 253
[exp 15 May 2004 \(s 226B \(5\)\)](#)

Existing permits under OH&S Regulations to use explosives

s 226C ins as mod SL2004-9 reg 253
[exp 1 September 2004 \(s 226C \(5\)\)](#)

Meaning of LPG for s 7

s 227 [exp 1 July 2004 \(s 227 \(3\)\)](#)

Transitional regulations

s 228 [exp 5 April 2006 \(s 231\)](#)

Modification of ch 14's operation

s 229 [exp 5 April 2006 \(s 231\)](#)

Legislation amended—sch 1

s 230 om LA s 89 (3)

Expiry of ch 14

s 231 [exp 5 April 2006 \(s 231\)](#)

Consequential amendments

sch 1 om LA s 89 (3)

Dictionary

dict

am A2004-28 amdt 3.15

def **dangerous substance** sub A2005-20 amdt 3.135def **premises** sub A2005-20 amdt 3.135**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 5 Apr 2004	5 Apr 2004– 15 May 2004	not amended	new Act and modifications by SL2004-9
R2 16 May 2004	16 May 2004– 30 June 2004	not amended	commenced expiry
R3 1 July 2004	1 July 2004– 1 July 2004	A2004-28	amendments by A2004-28
R4 2 July 2004	2 July 2004– 30 Aug 2004	A2004-28	commenced expiry
R5 31 Aug 2004	31 Aug 2004– 31 Aug 2004	A2004-28	amendment to modification
R6 1 Sep 2004	1 Sep 2004– 1 Sep 2004	A2004-66	amendments by A2004-66
R7 2 Sep 2004	2 Sep 2004– 14 Dec 2004	A2004-66	commenced expiry
R8 15 Dec 2004	15 Dec 2004– 22 Feb 2005	A2004-66	modification by SL2004-56
R9 23 Feb 2005	23 Feb 2005– 24 Mar 2005	A2005-3	uncommenced amendments by A2005-3

Endnotes

6 Modifications of republished law with temporary effect

Republication No and date	Effective	Last amendment made by	Republication for
R10 25 Mar 2005	25 Mar 2005– 3 Apr 2005	A2005-13	amendments by A2005-13
R11 4 Apr 2005	4 Apr 2005– 11 May 2005	A2005-13	amendments by A2004-66

6 Modifications of republished law with temporary effect

The following modifications have not been included in this republication:

**Dangerous Substances (General) Regulation 2004
SL2004-56 pt 6.1**

Part 6.1 Modification of Act, ch 14

600 Act modified—pt 6.1

This part modifies the *Dangerous Substances Act 2004*, chapter 14 (Consequential and transitional matters).

601 Section 226 (3)

substitute

- (3) The prescribed former licence ends on 31 March 2005.

7 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

Dangerous Substances (Asbestos) Amendment Act 2004 A2004-66 s 6, s 7 (as am by A2005-3)
--

6 New section 47K

in part 3A.4, insert

47K Liability of owners and occupiers to inspect

- (1) This section applies to an owner or occupier of premises if—
 - (a) the owner or occupier is engaging in activity at the premises that is a high-risk activity in relation to asbestos; and
 - (b) either of the following subparagraphs applies:
 - (i) the owner or occupier does not know whether there is asbestos at the premises;
 - (ii) the owner or occupier knows that there is asbestos at the premises but does not know the required information about the asbestos.
- (2) The owner or occupier has a duty of care—
 - (a) if subsection (1) (b) (i) applies—to find out whether there is asbestos at the premises and, if there is asbestos at the premises, to find out the required information about the asbestos; or
 - (b) if subsection (1) (b) (ii) applies—to find out the required information about the asbestos.
- (3) This section does not affect—
 - (a) common law rules about the liability of owners or occupiers in relation to their premises; or

Endnotes

7 Uncommenced amendments

- (b) any obligation an owner or occupier of premises has under any other territory law or contract; or
 - (c) any other duty of care; or
 - (d) any other liability, including any liability of manufacturers.
- (4) In this section:
- high-risk activity*** means an activity prescribed by regulation.
- required information***, about asbestos, means—
- (a) up-to-date information about the location and condition of the asbestos; and
 - (b) any other information prescribed by regulation.

7 New part 3A.5

insert

Part 3A.5 Other provisions about asbestos

47L Asbestos reports

- (1) A seller of property commits an offence if the seller does not, before the day the property is first advertised or offered for sale or listed by an agent, obtain an inspection report (an ***asbestos report***) for the property that—
- (a) is completed in accordance with the regulations; and
 - (b) contains the required information.

Maximum penalty: 10 penalty units.

- (2) If the property is a residential property, the asbestos report may be included in a building and compliance inspection report from an inspection carried out not earlier than 3 months before the day the property was first advertised or offered for sale or listed by an agent.

- (3) A seller of property commits an offence if an asbestos report for the property is not available for inspection to a prospective buyer (or an agent for a prospective buyer) during the time when an offer to buy the property may be made to the seller.

Maximum penalty: 10 penalty units.

- (4) This section does not apply in relation to a sale of property if—
- (a) the sale arises from the exercise of an option to buy the property and—
 - (i) the option was contained in a will or sublease; or
 - (ii) the period for exercise of the option was longer than 60 days; or
 - (b) the buyer is a related person of the seller.
- (5) An offence against this section is a strict liability offence.

- (6) In this section:

building and compliance inspection report—see the *Civil Law (Sale of Residential Property) Act 2003*, section 7.

property means—

- (a) land on which there are (or there are under construction) premises; or
- (b) a unit under the *Unit Titles Act 2001*; or
- (c) a lot in a community title scheme under the *Community Title Act 2001*.

prospective buyer, of property, includes a prospective grantee of an option to buy the property.

related person—see the *Duties Act 1999*, dictionary.

Endnotes

7 Uncommenced amendments

required information, for property, means—

- (a) up-to-date information about the location and condition of asbestos (if any) at the property; and
- (b) any other information prescribed by regulation.

residential property—see the *Civil Law (Sale of Residential Property) Act 2003*, section 8.

seller, of property, means a person who—

- (a) has a legal or equitable interest in the property that the person is entitled to sell; and
- (b) offers to sell, or invites an offer to buy, the interest.

**Statute Law Amendment Act 2005 A2005-20 sch 1 pt 1.1,
sch 3 pt 3.15**

Part 1.1 Dangerous Substances Act 2004

[1.1] Section 86 (1), note 1

substitute

Note 1 An inspector may issue a prohibition notice in relation to the site of a dangerous occurrence (see s 109 (2) (b) (ii)).

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.2] Section 108, definition of *basis*

substitute

basis, for giving a prohibition notice, means—

- (a) the contravention of this Act in relation to which the prohibition notice was given and the risk to be prevented or minimised under the notice (see section 109 (1)); or

- (b) the contravention of the improvement notice in relation to which the prohibition notice was given (see section 109 (2) (a)); or
- (c) the inspection, testing or monitoring to be allowed under the notice (see section 109 (2) (b) (i)); or
- (d) the accident or other incident to be investigated under the notice (see section 109 (2) (b) (ii)).

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.3] Section 109

substitute

109 Giving prohibition notices

- (1) An inspector may give a notice (a ***prohibition notice***) to a responsible person for a dangerous substance at premises if the inspector believes, on reasonable grounds, that—
 - (a) someone at the premises has contravened, is contravening, or is likely to contravene, this Act in relation to the substance; and
 - (b) giving the notice is necessary to prevent or minimise risk of serious harm to the health or safety of people, or substantial damage to property or the environment, from a hazard at the premises associated with the substance.
- (2) An inspector may also give a notice (also a ***prohibition notice***) to a responsible person for a dangerous substance at premises if the inspector believes, on reasonable grounds, that—
 - (a) someone at the premises has contravened, is contravening, or is likely to contravene, an improvement notice; or

Endnotes

- (b) giving the notice is necessary to allow—
- (i) the inspection, testing or monitoring of anything at the premises used in relation to the handling of the substance;
or
 - (ii) the investigation of an accident or other incident (including a dangerous occurrence) at the premises in relation to the substance.

Example for par (2) (b) (i)

to allow for routine compliance testing of plant and systems if the responsible person has not voluntarily agreed to the plant or system being shut down for the test

Note 1 For how documents may be served, see the Legislation Act, pt 19.5.

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Explanatory note

Existing section 109 (a) provides for a prohibition notice to be issued if an inspector believes, on reasonable grounds, that a person at premises has contravened, is contravening, or is likely to contravene, the Act. That provision is too general and unnecessarily applies to minor contraventions. Existing section 109 (b) (i) provides for a notice to be issued if an inspector believes, on reasonable grounds, that it is necessary to prevent or minimise risk of serious harm to the health or safety of people, or substantial damage to property or the environment, from a hazard at premises associated with a dangerous substance. The issue of a notice in those circumstances is not appropriate if there is not a contravention of the Act. This amendment (see new section 109 (1)) combines those requirements so that both requirements must be satisfied before a prohibition notice can be issued.

Existing section 109 (b) (ii) and (iii) (which are about notices given to allow inspection, testing, monitoring and investigation) are retained as independent grounds for the issue of a prohibition notice (see new section 109 (2) (b)).

The amendment also adds new section 109 (2) (a). That paragraph provides for a prohibition notice to be issued for a contravention or likely contravention of an improvement notice. This new ground recognises that a prohibition notice may need to be issued in relation to a dangerous substance even though the risk is less than that of the serious harm required for the issue of a prohibition notice under new section 109 (1). However, new section 109 (2) (a) has a considerably narrower scope than existing section 109 (a) (see above) and it is balanced by the requirement that an improvement notice must have been issued.

[1.4] Section 110 (2) (b)

omit

section 109 (a) or (b) (i) (which are about notices given in relation to contravention of this Act or to prevent or minimise risk of serious harm or substantial damage)

substitute

section 109 (1) or (2) (a) (which are about notices given to prevent or minimise risk of serious harm etc from contravention of this Act or the contravention of an improvement notice)

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.5] Section 110 (2) (c)

omit

section 109 (b) (ii) or (iii) (which are about

substitute

section 109 (2) (b) (which is about

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

Endnotes

7 Uncommenced amendments

[1.6] Section 111 (1)

omit

section 109 (b) (ii) or (iii)

substitute

section 109 (2) (b)

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.7] Section 115 (1)

substitute

- (1) This section applies to a prohibition notice if the notice was given under section 109 (1) or (2) (a) (which are about notices given to prevent or minimise risk of serious harm etc from contravention of this Act or the contravention of an improvement notice).

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.8] Section 116 (1)

omit

section 109 (a) or (b) (i)

substitute

section 109 (1) or (2) (a)

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

[1.9] Section 118 (1)

omit

section 109 (b) (ii) or (iii) (which are about

substitute

section 109 (2) (b) (which is about

Explanatory note

This amendment is consequential on the remaking of section 109 by another amendment.

Part 3.15 Dangerous Substances Act 2004**[3.127] Section 97 (2) (a)**

omit

measures; and

substitute

measures; or

Explanatory note

Section 97 (2) requires the notification and display of compliance agreements. Similar provisions of the Act are section 103 (2) for improvement notices and section 112 (2) for prohibition notices. In section 97 (2) and section 103 (2) the conjunction used for linking the requirements is ‘and’ and in section 112 (2) ‘or’ is used. The intention is that a person who fails to notify or display the notice in accordance with paragraph (a) or paragraph (b) contravenes the section. This amendment changes ‘and’ to ‘or’ to make the separate obligations clearer, to bring the subsection into line with current drafting practice and to make it consistent with section 112 (2).

[3.128] Section 103 (2) (a)

omit

under it; and

substitute

under it; or

Endnotes

7 Uncommenced amendments

Explanatory note

Section 103 (2) requires the notification and display of improvement notices. Similar provisions of the Act are section 97 (2) for compliance agreements and section 112 (2) for prohibition notices. In section 97 (2) and section 103 (2) the conjunction used for linking the requirements is ‘and’ and in section 112 (2) ‘or’ is used. The intention is that a person who fails to notify or display the notice in accordance with paragraph (a) or paragraph (b) contravenes the section. This amendment changes ‘and’ to ‘or’ to make the separate obligations clearer, to bring the subsection into line with current drafting practice and to make it consistent with section 112 (2).

[3.129] Section 108, definitions of *dangerous substance* and *premises*

omit

Explanatory note

This amendment omits the definitions of *dangerous substance* and *premises* for part 6.4. The terms are defined for the Act generally (see section 10 for *dangerous substance* and the dictionary for *premises*). With 1 exception, defining these terms for part 6.4 adds nothing to the definitions for the Act. This amendment also brings this aspect of the Act into line with the *Occupational Health and Safety Act 1989* which does not have similar definitions for its prohibition notice provisions.

The exception is the definition of *relevant responsible person* which is amended by another amendment.

[3.130] Section 108, definition of *relevant responsible person*

substitute

relevant responsible person, for a prohibition notice, means the responsible person for the dangerous substance stated in the notice to whom the notice is given.

Explanatory note

This amendment is consequential on the omission of the definition of *dangerous substance* in section 108 by another amendment.

[3.131] Section 119 (1)

omit

A relevant responsible person

substitute

The relevant responsible person

Explanatory note

This amendment makes a minor change to bring the subsection into line with section 107 (1) in relation to improvement notices and the comparable provisions in the *Occupational Health and Safety Act 1989* about improvement and prohibition notices.

[3.132] Section 119 (1)

omit

a dangerous substance to which a prohibition notice relates

substitute

a prohibition notice

Explanatory note

This amendment omits words that are unnecessary because a prohibition notice must relate to a dangerous substance (see section 110 (2) (a) (ii)). It also brings the subsection into line with section 107 (1) in relation to improvement notices and the comparable provisions in the *Occupational Health and Safety Act 1989* about improvement and prohibition notices.

[3.133] Section 169 (1) (c) (i)

omit

infringement notice

substitute

information

Explanatory note

This amendment corrects a typographical error.

Endnotes

7 Uncommenced amendments

[3.134] Section 200 (4), definition of *authorised person*

substitute

authorised person, for an infringement notice offence, means an authorised person for the infringement notice offence under the *Magistrates Court Act 1930*, section 134A.

Explanatory note

This amendment specifies the relevant provision of the *Magistrates Court Act 1930*.

[3.135] Dictionary, definitions of *dangerous substance* and *premises*

substitute

dangerous substance—see section 10.

premises includes land or a structure or vehicle and any part of an area of land or a structure or vehicle.

Explanatory note

This amendment is consequential on the omission of the definitions of *dangerous substance* and *premises* in section 108 by another amendment.

© Australian Capital Territory 2005