



Australian Capital Territory

Dangerous Goods (Road Transport) Act 2009

A2009-34

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Australian Capital Territory

Dangerous Goods (Road Transport) Act 2009

A2009-34

An Act to make provision for safety in the transport of dangerous goods by road as part of the system of nationally consistent road transport laws, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Chapter 1 Preliminary

Part 1.1 Introduction

1 Name of Act

This Act is the *Dangerous Goods (Road Transport) Act 2009*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (2) If this Act has not commenced within 1 year beginning on its notification day, it automatically commences on the first day after that period.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

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 '*vehicle*—see the *Road Transport (General) Act 1999*, dictionary.' means that the term 'vehicle' is defined in that dictionary 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.

6 Purpose of Act

The purpose of this Act is to regulate the transport of dangerous goods by road in order to—

- (a) promote public safety; and
- (b) protect property and the environment.

7 Application of Act

This Act does not apply to—

- (a) dangerous goods that are, or form part of, a person's personal safety equipment in a vehicle transporting dangerous goods; and
- (b) dangerous goods that are in a container that is designed to form part of, and forms part of, the fuel or battery system of a vehicle's engine, auxiliary engine, fuel burning appliance or other part of a vehicle's propulsion equipment.

8 Inconsistency with other laws

- (1) If this Act is inconsistent with a dangerous goods law, the dangerous goods law prevails.
- (2) If this Act is inconsistent with the *Radiation Protection Act 2006*, that Act prevails.
- (3) In this section:

dangerous goods law means a law in force in the ACT that—

- (a) relates to the storage and handling of dangerous goods; but
- (b) does not relate to the transport of dangerous goods by road.

Part 1.2 Important concepts

9 Meaning of *compliance purposes*

- (1) For this Act, a function is exercised for *compliance purposes* if the function is exercised to—
- (a) find out whether this Act is being complied with; or
 - (b) investigate an offence, or suspected offence, against this Act.

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) To remove any doubt, a function may be exercised for compliance purposes even if the function is also exercised for 1 or more other purposes.

10 Meaning of *consigns* and *consignor*

- (1) For this Act, a person *consigns* goods for transport, and is the *consignor* of the goods, if—
- (a) subsection (2) applies to the person; or
 - (b) subsection (2) does not apply to the person or anyone else, but subsection (3) applies to the person; or
 - (c) subsections (2) and (3) do not apply to the person or anyone else, but subsection (4) applies to the person.
- (2) This subsection applies to a person who, with the person's authority, is named or otherwise identified in transport documentation as the consignor of the goods.
- (3) This subsection applies to a person who—
- (a) engages a prime contractor, either directly or through an agent or other intermediary, to transport the goods; or

- (b) if paragraph (a) does not apply—has possession of, or control over, the goods immediately before the goods are transported; or
- (c) if neither paragraph (a) nor (b) applies—loads a vehicle with the goods, for transport, at a place—
 - (i) where dangerous goods are awaiting collection; and
 - (ii) that is unattended (except by the driver) during loading.
- (4) This subsection applies to a person if—
 - (a) the goods are imported into Australia; and
 - (b) the person is the importer of the goods.
- (5) For this section, the *driver* of a vehicle that is a trailer, and is not connected (either directly or by 1 or more other trailers) to a towing vehicle, is the driver of the towing vehicle of the combination to which the trailer was, or apparently was, last connected.

11 **Meaning of *packaging***

For this Act, *packaging*, in relation to goods, is anything that contains, holds, protects or encloses the goods, whether directly or indirectly, to enable them to be received or held for transport, or to be transported, and includes anything declared by regulation to be packaging.

Note 1 It may be that a container constitutes the whole of the packaging of goods, as in the case of a drum in which dangerous goods are directly placed.

Note 2 Unlike in United Nations publications relating to the transport of dangerous goods, the term *packaging* is defined in this Act in accordance with its ordinary meaning.

12 Meaning of *packs* and *packer*

For this Act, a person *packs* goods for transport, and is a *packer* of the goods, if the person—

- (a) puts the goods in packaging (even if that packaging is already in a vehicle); or
- (b) assembles, places or secures packages in packaging designed to hold, enclose or otherwise contain more than 1 package (even if that packaging is already in a vehicle); or
- (c) supervises an activity mentioned in paragraph (a) or (b); or
- (d) manages or controls an activity mentioned in paragraph (a), (b) or (c).

Example

A person who uses a hose to fill the tank of a tank vehicle with petrol packs the petrol for transport for this Act.

Note 1 **Tank vehicle**—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).

13 Meaning of *loads* and *loader*

- (1) For this Act, a person *loads* goods for transport, and is a *loader* of the goods, if the person—
 - (a) loads 1 or more packages of the goods in a vehicle; or
 - (b) places or secures 1 or more packages of the goods in a vehicle; or
 - (c) supervises an activity mentioned in paragraph (a) or (b); or
 - (d) manages or controls an activity mentioned in paragraph (a), (b) or (c).

- (2) Subsection (1) does not apply to—
- (a) the loading of goods into packaging that is already in a vehicle;
or
 - (b) the placing or securing of packages in or on further packaging that is already in a vehicle.

14 Meaning of *operator*

- (1) For this Act, a person is an *operator* of a vehicle if—
- (a) for a vehicle (including a vehicle in a group of vehicles that are physically connected)—the person is responsible for controlling or directing the operations of the vehicle; or
 - (b) for a group of vehicles that are physically connected—the person is responsible for controlling or directing the operations of the towing vehicle in the group.
- (2) A person is not an operator of a vehicle only because the person owns the vehicle or does any or all of the following:
- (a) drives the vehicle;
 - (b) maintains or arranges for the maintenance of the vehicle;
 - (c) arranges for the registration of the vehicle.

15 Meaning of *qualified to drive vehicle or run engine*

For this Act, a person is *qualified* to drive a vehicle, or run its engine, if the person—

- (a) holds a driver licence of the appropriate class to drive the vehicle and the driver licence is not suspended; and

- (b) is not prevented under a law from driving the vehicle at the relevant time.

Example—law preventing person from driving

condition of the person's licence that the person not drive the vehicle

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).

16 Meaning of *fit* to drive vehicle or run engine

For this Act, a person is *fit* to drive a vehicle, or run its engine, if the person—

- (a) is apparently physically and mentally fit to drive the vehicle; and
- (b) without limiting paragraph (a), is apparently not affected by alcohol or a drug that affects the person's fitness to drive; and
- (c) is not, at the relevant time, found to have a concentration of alcohol in the person's blood that exceeds the amount permitted by an ACT law.

17 Meaning of *authorised* to drive or run engine

- (1) For this Act, a person is *authorised* to drive a vehicle if the person—
- (a) is the operator of the vehicle; or
- (b) has the authority of the operator of the vehicle to drive the vehicle.
- (2) For this Act, a person is *authorised* to run the engine of a vehicle if the person—
- (a) is the operator of the vehicle; or
- (b) has the authority of the operator of the vehicle to drive the vehicle or run its engine.

- (3) To avoid any doubt, a person may be authorised to drive a vehicle or run its engine, whether or not the person is qualified to drive the vehicle or run its engine.

18 Meaning of *unattended* vehicle

- (1) For this Act, a vehicle is *unattended*—
- (a) if an authorised person is near the vehicle—if there is, after inspection and enquiry by the person that is reasonable in the circumstances, apparently no one in or near the vehicle who appears to be a driver of the vehicle; or
 - (b) if an authorised person is not near the vehicle but is able to inspect the area near the vehicle by way of a camera or other remote surveillance system—if there is, after inspection by the person that is reasonable in the circumstances, apparently no one in or near the vehicle who appears to be a driver of the vehicle; or
 - (c) if there appears to be a person (the *assumed driver*) who is the driver of the vehicle in or near the vehicle—if the authorised person believes on reasonable grounds that—
 - (i) the assumed driver is not qualified, not fit or not authorised to drive the vehicle; or
 - (ii) the assumed driver is or appears to be unwilling to drive the vehicle; or
 - (iii) the assumed driver is subject to a direction under section 47 (Direction to leave pt 3.2 vehicle) in relation to the vehicle.
- (2) In this section:
- driver* of a vehicle that is a trailer—see section 10 (Meaning of *consigns* and *consignor*).

19 **Meaning of *broken-down* vehicle or trailer**

In this Act:

broken-down means—

- (a) for a vehicle—a vehicle that is impossible to drive because the vehicle is disabled through damage, mechanical failure, lack of fuel or a similar reason; and
- (b) for a trailer—a trailer that is not connected (either directly or by 1 or more other trailers) to a towing vehicle, whether or not the trailer is also disabled through damage, mechanical failure or a similar reason.

Chapter 2 Competent authorities and authorised people

Part 2.1 Competent authorities

20 Competent authorities

- (1) The Minister must declare 1 or more entities as competent authorities for this Act.
- (2) A declaration is a notifiable instrument.

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

21 Competent authority may delegate functions

- (1) A competent authority may delegate the authority's functions under this Act to—
 - (a) an authorised person appointed by the authority; or
 - (b) a police officer; or
 - (c) a public employee; or
 - (d) another person prescribed by regulation.

Note 1 For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Note 2 In particular, the delegation must be in writing (see Legislation Act, s 232).

Note 3 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) However, subsection (1) does not apply to the authority's function to appoint an authorised person.

**22 Competent authority may give information to
corresponding authority**

A competent authority may give the following information to a corresponding authority:

- (a) information about any action taken by the competent authority under this Act;
- (b) any information obtained under this Act, including any information contained in a record, device or other thing inspected or seized under this Act.

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).

Part 2.2 Authorised people

23 Authorised people

- (1) Each of the following is an *authorised person* for this Act:
 - (a) a competent authority;
 - (b) a police officer;
 - (c) a person appointed under subsection (2).
- (2) A competent authority (the *appointing competent authority*) may appoint a person as an authorised person 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 Legislation Act, s 207).

24 Identity cards

- (1) The appointing competent authority must give an authorised person (other than a police officer) an identity card stating the authorised person's name and that the person is an authorised person.
- (2) The identity card must show—
 - (a) a recent photograph of the authorised person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
 - (a) the person stops being an authorised person; and

- (b) the person does not return the person's identity card to the appointing competent authority as soon as practicable (but not later than 7 days) after the day the person stops being an authorised person.

Maximum penalty: 1 penalty unit.

- (4) Subsection (3) does not apply to a person if the person's identity card has been—
 - (a) lost or stolen; or
 - (b) destroyed by someone other than the person.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

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

25 Production of identity cards

- (1) An authorised person who is not a police officer must—
 - (a) carry the authorised person's identity card while exercising a function under this Act; and
 - (b) if practicable, produce the card before exercising a function under this Act.

Note 1 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 2 An authorised person must produce the card in certain circumstances (see pt 3.5).

- (2) A police officer exercising a function as an authorised person under this Act must, if practicable, comply with a request to identify himself or herself by—
 - (a) producing evidence that he or she is a police officer; or

- (b) stating orally or in writing his or her name, rank and place of duty.
- (3) Subsection (2) does not apply in relation to a police officer in uniform.

26 Reciprocal powers agreements

- (1) This section has effect in relation to another jurisdiction if the corresponding law of the other jurisdiction contains provisions corresponding to this section.
- (2) The Minister may enter into an agreement (a *reciprocal powers agreement*) with a Minister of the other jurisdiction—
 - (a) for section 27; and
 - (b) to amend or revoke the agreement.
- (3) A reciprocal powers agreement is a notifiable instrument.

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

27 Reciprocal powers agreements—functions

- (1) To the extent anticipated by a reciprocal powers agreement with another jurisdiction—
 - (a) an authorised person (including a police officer) may, in the ACT or other jurisdiction, exercise functions given to an interstate authorised person under the corresponding law of the other jurisdiction; and
 - (b) a police officer may, in the ACT or other jurisdiction, exercise functions given to an interstate police officer under the corresponding law of the other jurisdiction; and
 - (c) an interstate authorised person of the other jurisdiction may, in the ACT or other jurisdiction, exercise functions given to authorised people (other than police officers in their capacity as police officers) under this Act; and

- (d) an interstate police officer of the other jurisdiction may, in the ACT or other jurisdiction, exercise functions given to an authorised person (including a police officer) under this Act.
- (2) Anything done or omitted to be done by an authorised person or police officer under subsection (1) (a) or (b) is taken to have been done under this Act as well as under the corresponding law.
- (3) A regulation may make provision for the exercise of functions under this section.

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).

- (4) In this section:

interstate authorised person, of another jurisdiction, means an authorised person (however described), other than a police officer, of the other jurisdiction.

interstate police officer, of another jurisdiction, means a police officer of the other jurisdiction.

Chapter 3 Road transport

Part 3.1 Offences—licensing, safety and insurance obligations

28 Offences—licensing of vehicles transporting dangerous goods

- (1) A prime contractor must not use a vehicle to transport dangerous goods (other than as the driver of the vehicle) if—
- (a) a regulation requires the vehicle to be licensed to transport the goods; and
 - (b) the vehicle is not licensed as required.

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

- (2) A person must not consign dangerous goods for transport in a vehicle if the person knows, or ought reasonably to know, that—
- (a) a regulation requires the vehicle to be licensed to transport the goods; and
 - (b) the vehicle is not licensed as required.

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

- (3) A person must not drive a vehicle transporting dangerous goods if—
- (a) a regulation requires the vehicle to be licensed to transport the goods; and

(b) the vehicle is not licensed as required.

Maximum penalty: 100 penalty units.

(4) Strict liability applies to subsection (3).

29 Offences—licensing of drivers transporting dangerous goods

(1) A person commits an offence if—

(a) the person employs, engages, causes or permits someone else to drive a vehicle transporting dangerous goods; and

(b) the other person is required by regulation to be licensed to drive the vehicle; and

(c) the other person is not licensed as required.

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

(2) A person must not drive a vehicle transporting dangerous goods if—

(a) a regulation requires the person to be licensed to drive the vehicle; and

(b) the person is not licensed as required.

Maximum penalty: 100 penalty units.

(3) Strict liability applies to subsections (1) (b) and (2).

30 Offences—goods too dangerous to be transported

(1) A person commits an offence if—

(a) the person consigns goods for transport by road; and

(b) a regulation identifies the goods as being goods too dangerous to be transported; and

- (c) the person is negligent about whether the goods are goods too dangerous to be transported.

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

- (2) A person commits an offence if—
 - (a) the person arranges the transport of goods in a vehicle owned or controlled by the person; and
 - (b) a regulation identifies the goods as being goods too dangerous to be transported; and
 - (c) the person is negligent about whether the goods are goods too dangerous to be transported.

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

31 Offence—s 30 conduct causing death or serious injury

- (1) A person commits an offence if—
 - (a) the person engages in conduct that is a physical element of an offence mentioned in section 30; and
 - (b) the conduct causes the death of, or serious injury to, someone else; and
 - (c) the person intends to cause, or is reckless about causing, the death of, or serious injury to, the other person or anyone else by the conduct.

Maximum penalty: 1000 penalty units, imprisonment for 4 years or both.

- (2) In this section:

causes death or serious injury—a person *causes* death or serious injury if the person’s conduct substantially contributes to the death or injury.

conduct includes omission.

32 Alternative verdicts—s 30 conduct causing death or serious injury

- (1) This section applies if, in a prosecution for an offence against section 31, the trier of fact is not satisfied beyond reasonable doubt that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed the offence against section 30 (Offences—goods too dangerous to be transported).
- (2) The trier of fact may find the defendant guilty of the offence against section 30, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

33 Offences—transport of dangerous goods

- (1) A person commits an offence if the person—
- (a) is involved in the transport of dangerous goods by road; and
 - (b) fails to ensure that the goods are transported in a safe way.

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

- (2) A person commits an offence if the person—
- (a) is involved in the transport of dangerous goods by road; and
 - (b) fails to comply with this Act; and

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).

- (c) knows or ought reasonably to know that the failure is likely to endanger—
 - (i) the safety of people; or
 - (ii) property or the environment.

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

- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—
 - (a) the defendant, as far as practicable, ensured that the goods were transported in a safe way; or
 - (b) the—
 - (i) offence is brought about by someone else over whom the defendant has no control or by a non-human act or event over which the defendant has no control; and
 - (ii) defendant could not reasonably have been expected to guard against the bringing about of the offence.

Note The defendant has a legal burden in relation to the matters mentioned in s (3) (see Criminal Code, s 59).

34 Offence—s 33 conduct causing death or serious injury

- (1) A person commits an offence if—
 - (a) the person engages in conduct that is a physical element of an offence mentioned in section 33; and
 - (b) the conduct causes the death of, or serious injury to, someone else; and

- (c) the person intends to cause, or is reckless about causing, the death of, or serious injury to, the other person or anyone else by the conduct.

Maximum penalty: 1000 penalty units, imprisonment for 4 years or both.

- (2) In this section:

causes death or serious injury—a person *causes* death or serious injury if the person’s conduct substantially contributes to the death or injury.

conduct includes omission.

35 Alternative verdicts—s 33 conduct causing death or serious injury

- (1) This section applies if, in a prosecution for an offence against section 34, the trier of fact is not satisfied beyond reasonable doubt that the defendant committed the offence but is satisfied beyond reasonable doubt that the defendant committed the offence against section 33 (Offences—transport of dangerous goods).
- (2) The trier of fact may find the defendant guilty of the offence against section 33, but only if the defendant has been given procedural fairness in relation to that finding of guilt.

36 Offence—vehicle not insured or approved—owner

- (1) The owner of a vehicle commits an offence—
- (a) if the owner uses the vehicle, or permits it to be used, to transport a placard load; and

- (b) if—
- (i) the use of the vehicle is not covered by an insurance policy or other form of indemnity for an amount not less than \$5 000 000 or, if another amount is prescribed by regulation, the prescribed amount in relation to—
 - (A) personal injury, death, property damage and other damage (except consequential economic loss) arising out of any fire, explosion, leakage or spillage of dangerous goods in or from the vehicle or any packaging transported in the vehicle; and
 - (B) costs incurred by or on behalf of a Commonwealth, State or Territory government authority in a clean-up resulting from such a fire, explosion, leakage or spillage; or
 - (ii) if—
 - (A) the owner does not have an approval under a regulation in relation to the use of the vehicle; or
 - (B) the owner has an approval under a regulation in relation to the use of the vehicle, but is not complying with any relevant condition of the approval.

Maximum penalty: 50 penalty units.

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

vehicle means each load-bearing vehicle, whether or not a motor vehicle and whether or not it is being used in combination with another vehicle.

37 Offence—vehicle not insured or approved—prime contractor

- (1) A prime contractor commits an offence—
- (a) if the prime contractor uses a vehicle to transport a placard load; and
 - (b) if—
 - (i) the use of the vehicle is not covered by an insurance policy or other form of indemnity for an amount not less than \$5 000 000 or, if another amount is prescribed by regulation, the prescribed amount in relation to—
 - (A) personal injury, death, property damage and other damage (except consequential economic loss) arising out of any fire, explosion, leakage or spillage of dangerous goods in or from the vehicle or any packaging transported in the vehicle; and
 - (B) costs incurred by or on behalf of a Commonwealth, State or Territory government authority in a clean-up resulting from such a fire, explosion, leakage or spillage; or
 - (ii) if—
 - (A) the prime contractor does not have an approval under a regulation in relation to the vehicle; or
 - (B) the prime contractor has an approval under a regulation in relation to the use of the vehicle, but is not complying with any relevant condition of the approval.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) In this section:
vehicle—see section 36 (3).

Part 3.2 **General powers—pt 3.2 vehicles and drivers**

Division 3.2.1 **Preliminary**

38 **Application—pt 3.2**

- (1) This part applies to a vehicle (a *part 3.2 vehicle*) if—
- (a) 1 or more of the following applies to the vehicle:
 - (i) it has a placard on it;
 - (ii) it is carrying a container that has a placard on it;
 - (iii) an authorised person believes on reasonable grounds that it is carrying dangerous goods or goods too dangerous to be transported;
 - (iv) an authorised person believes on reasonable grounds that it is licensed under a regulation to carry dangerous goods, or that it is used to carry goods for commercial purposes; and
 - (b) the vehicle is—
 - (i) on a road or road related area; or
 - (ii) at a public place; or
 - (iii) at premises occupied or owned by the Territory; or
 - (iv) at premises where an authorised person is lawfully present after entry under part 3.5 (Enforcement).
- (2) This part applies to the driver of a part 3.2 vehicle who is apparently in or near the vehicle.

(3) In this section:

public place means a place which is open to or used by the public or a section of the public, or used for a public purpose, whether—

- (a) by payment, membership of a body or otherwise; or
- (b) by entitlement or permission.

Division 3.2.2 Directions in relation to pt 3.2 vehicles

39 Direction to stop pt 3.2 vehicle

- (1) An authorised person may, for compliance purposes, direct—
- (a) the driver of a part 3.2 vehicle to stop the vehicle; or
 - (b) the driver of a part 3.2 vehicle, or anyone else, not to do 1 or more of the following:
 - (i) move the vehicle;
 - (ii) interfere with the vehicle or any equipment in the vehicle;
 - (iii) interfere with the load in the vehicle.
- Note* For when a function is exercised for *compliance purposes*, see s 9.
- (2) A direction to stop a part 3.2 vehicle may require that the vehicle be stopped—
- (a) without delay; or
 - (b) at the nearest place that the vehicle can be safely stopped as indicated by the authorised person.

- (3) A direction given under subsection (1) does not prevent an authorised person from giving the driver, the other person or someone else a later inconsistent direction under another provision of this Act.

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).

- (4) A direction given under subsection (1) ceases to be operative to the extent that an authorised person—
- (a) gives the driver, the other person or someone else a later inconsistent direction; or
 - (b) indicates to the person to whom the direction is given that the direction is no longer operative.
- (5) An authorised person may direct a part 3.2 vehicle to be stopped only for the amount of time necessary for the person to exercise the function.

- (6) In this section:

stop a vehicle means stop the vehicle and keep the vehicle stationary.

Note 1 If the driver fails to comply with the direction, the driver may be directed to leave the vehicle (see s 47).

Note 2 How a direction may be given is dealt with in s 63.

Note 3 General provisions about directions are in pt 3.4.

40 Offence—fail to comply with direction to stop pt 3.2 vehicle

- (1) A person commits an offence if—
- (a) the person is subject to a direction under section 39; and

(b) the person fails to comply with the direction.

Maximum penalty: 50 penalty units.

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

41 Direction to move pt 3.2 vehicle

(1) An authorised person may, for compliance purposes, direct the driver of a part 3.2 vehicle to move the vehicle, or cause the vehicle to be moved, to the nearest suitable location, within the maximum distance, that is stated by the authorised person.

Note For when a function is exercised for *compliance purposes*, see s 9.

(2) In this section:

maximum distance, in relation to a vehicle, means a distance (in any direction) within a radius of 30km of—

- (a) the location of the vehicle when the direction is given; or
- (b) any point along the forward route of the journey, if the direction is given during a journey of the vehicle.

suitable location, for an authorised person giving a direction, means a location that the person believes on reasonable grounds to be suitable for complying with the direction, having regard to any matters the person considers relevant in the circumstances.

Note 1 If the driver fails to comply with the direction, the driver may be directed to leave the vehicle (see s 47).

Note 2 How a direction may be given is dealt with in s 63.

Note 3 General provisions about directions are in pt 3.4.

42 Offence—fail to comply with direction to move pt 3.2 vehicle

- (1) A person commits an offence if the person—
- (a) is subject to a direction under section 41; and
 - (b) fails to comply with the direction.
- Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a defendant if—
- (a) it was not practicable for the defendant to move the vehicle because the vehicle was broken-down; and
 - (b) the breakdown happened for a physical reason beyond the defendant's control; and
 - (c) the breakdown could not be readily rectified in a way that would allow the direction to be complied with within a reasonable time.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

43 Direction to produce document etc

- (1) An authorised person may, for compliance purposes, direct the driver of a part 3.2 vehicle to produce—
- (a) the driver's driver licence; or
 - (b) any licence the driver is required to have under a regulation; or
 - (c) any transport documentation that is required to be carried in the vehicle under a regulation.

Note For when a function is exercised for *compliance purposes*, see s 9.

- (2) The authorised person may seize a licence produced under this section if the person believes on reasonable grounds that—
- (a) the licence has been cancelled or suspended; or
 - (b) the licence has otherwise ceased to have effect; or
 - (c) the licence has been amended and the amendment is not recorded on the licence; or
 - (d) the person who produced the licence is not the licensee.
- (3) Also, an authorised person to whom a document that appears to be a licence or transport documentation is produced in response to the direction may seize the document if the person believes on reasonable grounds that the document is not a licence or transport documentation.

Note 1 If the driver fails to comply with the direction, the driver may be directed to leave the vehicle (see s 47).

Note 2 How a direction may be given is dealt with in s 63.

Note 3 General provisions about directions are in pt 3.4.

44 Offence—fail to comply with direction to produce document

- (1) A person commits an offence if the person—
- (a) is subject to a direction under section 43; and
 - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

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

45 Direction to move pt 3.2 vehicle—dangerous situation, harm or obstruction

- (1) This section applies if an authorised person believes on reasonable grounds that a part 3.2 vehicle is—
 - (a) causing a dangerous situation or is causing serious harm, or creating an imminent risk of serious harm, to road infrastructure; or
 - (b) causing, or likely to cause, an obstruction to traffic or any event lawfully authorised to be held on a road or road related area; or
 - (c) obstructing, or likely to obstruct, 1 or more vehicles entering or leaving land adjacent to a road or road related area.
- (2) The authorised person may direct the driver of the vehicle, or a person who is apparently in charge of the vehicle, to do either or both of the following:
 - (a) move the vehicle, or cause the vehicle to be moved, to the extent reasonably necessary to avoid the situation, harm or obstruction;
 - (b) do anything else reasonably required by the authorised person, or to cause anything else reasonably required by the person to be done, to avoid the situation, harm or obstruction.

Note 1 If the driver fails to comply with the direction, the driver may be directed to leave the vehicle (see s 47).

Note 2 How a direction may be given is dealt with in s 63.

Note 3 General provisions about directions are in pt 3.4.

46 Offence—fail to comply with direction to move pt 3.2 vehicle—dangerous situation, harm or obstruction

- (1) A person commits an offence if the person—
- (a) is subject to a direction under section 45; and
 - (b) fails to comply with the direction.
- Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a defendant who is given a direction under section 45 (2) (a) if—
- (a) it was not practicable for the defendant to move the vehicle because the vehicle was broken-down; and
 - (b) the breakdown happened for a physical reason beyond the defendant's control; and
 - (c) the breakdown could not be readily rectified in a way that would allow the direction to be complied with within a reasonable time.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

47 Direction to leave pt 3.2 vehicle

- (1) This section applies if—
- (a) the driver of a part 3.2 vehicle fails to comply with a direction given by an authorised person under—
 - (i) section 39 (Direction to stop pt 3.2 vehicle); or
 - (ii) section 41 (Direction to move pt 3.2 vehicle); or
 - (iii) section 43 (Direction to produce document etc); or
 - (iv) section 45 (Direction to move pt 3.2 vehicle—dangerous situation, harm or obstruction); or

- (b) an authorised person believes on reasonable grounds that the driver of a part 3.2 vehicle is not qualified, not fit or not authorised to drive the vehicle in order to comply with the direction.
- (2) The authorised person may direct the driver to do 1 or more of the following:
- (a) leave the driver's seat;
 - (b) leave the vehicle;
 - (c) not occupy the driver's seat until allowed to do so by an authorised person;
 - (d) not enter the vehicle until allowed to do so by an authorised person.
- (3) The authorised person may direct anyone else to do either or both of the following:
- (a) leave the vehicle;
 - (b) not enter the vehicle until allowed to do so by an authorised person.

Note 1 How a direction may be given is dealt with in s 63.

Note 2 General provisions about directions are in pt 3.4.

48 Offence—fail to comply with direction to leave pt 3.2 vehicle

- (1) A person commits an offence if the person—
- (a) is subject to a direction under section 47; and
 - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

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

49 Direction in relation to immobilised pt 3.2 vehicle

- (1) This section applies if an authorised person believes on reasonable grounds that a part 3.2 vehicle is broken-down or otherwise immobilised on a road or road related area.
- (2) The authorised person may give a direction to the driver of the vehicle or a person apparently in charge of the vehicle about 1 or more of the following:
 - (a) how repair work is to be done on the vehicle;
 - (b) how the vehicle is to be towed off the road or road related area;
 - (c) how any goods are to be removed from the vehicle;
 - (d) how any goods are to be dealt with after their removal from the vehicle.

Note 1 How a direction may be given is dealt with in s 63.

Note 2 General provisions about directions are in pt 3.4.

50 Offence—fail to comply with direction in relation to immobilised pt 3.2 vehicle

- (1) A person commits an offence if the person—
 - (a) is subject to a direction under section 49; and
 - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

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

51 Direction in relation to pt 3.2 vehicle—dangerous situation

- (1) This section applies if a part 3.2 vehicle is involved in an incident resulting in a dangerous situation.
- (2) An authorised person may give directions to the driver or a person apparently in charge of the vehicle about—
 - (a) the transport of any goods in the vehicle from the place of the incident; or
 - (b) how otherwise to deal with the goods.
- (3) The direction must—
 - (a) be in writing and signed by the authorised person; and
 - (b) state the name of the person to whom it is given; and
 - (c) identify the incident; and
 - (d) identify the goods to which it relates.
- (4) However, if it is not practicable to give the direction in writing, the direction may be given orally and confirmed in writing within 48 hours.

Note **Dangerous situation**—see the dictionary.

52 Offence—fail to comply with direction in relation to pt 3.2 vehicle—dangerous situation

- (1) A person commits an offence if the person—
 - (a) is subject to a direction under section 51; and
 - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

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

Division 3.2.3 Other powers in relation to pt 3.2 vehicles

53 Moving unattended pt 3.2 vehicle—exercise other functions

- (1) This section applies if an authorised person—
 - (a) believes on reasonable grounds that a part 3.2 vehicle is unattended on a road or road related area; and
 - (b) is seeking to exercise a function in relation to the vehicle for compliance purposes; and
 - (c) believes on reasonable grounds that the vehicle should be moved to allow or facilitate the exercise of the function.

Note For when a function is exercised for **compliance purposes**, see s 9.

- (2) The authorised person may move the vehicle (by driving or towing the vehicle or otherwise) to the extent reasonably necessary to allow or facilitate the exercise of the function.
- (3) Also, the authorised person may authorise someone else (an **authorised assistant**) to move the vehicle (by driving or towing the vehicle or otherwise) to the extent reasonably necessary to allow or facilitate the exercise of the function.
- (4) The authorised person or authorised assistant may enter the vehicle to move the vehicle.
- (5) The authorised person or authorised assistant may use reasonable force to do 1 or more of the following:
 - (a) open unlocked doors and other unlocked panels and objects;
 - (b) gain access to the vehicle, or its engine or other mechanical components, to allow the vehicle to be moved;
 - (c) allow the vehicle to be towed.
- (6) However, only a police officer may use force against a person.

- (7) The authorised person or authorised assistant may drive the vehicle only if qualified and fit to drive the vehicle.

**54 Moving unattended and broken-down pt 3.2 vehicles—
dangerous situation or obstruction**

- (1) This section applies if an authorised person believes on reasonable grounds that a part 3.2 vehicle—
- (a) is unattended or broken-down; and
 - (b) is—
 - (i) causing a dangerous situation; or
- Note* **Dangerous situation**—see the dictionary.
- (ii) causing, or likely to cause, an obstruction to traffic or any event lawfully authorised to be held on a road or road related area; or
 - (iii) obstructing, or likely to obstruct, 1 or more vehicles entering or leaving land adjacent to a road or road related area.
- (2) The authorised person may move the vehicle (by driving or towing the vehicle or otherwise) to the extent reasonably necessary to avoid the dangerous situation or obstruction.
- (3) Also, the authorised person may authorise someone else (an **authorised assistant**) to move the vehicle (by driving or towing the vehicle or otherwise) to the extent reasonably necessary to avoid the dangerous situation or obstruction.
- (4) The authorised person or authorised assistant may enter the vehicle to move the vehicle.
- (5) The authorised person or authorised assistant may use reasonable force to the extent reasonably necessary to avoid the dangerous situation or obstruction.

- (6) However, only a police officer may use force against a person.
- (7) If an authorised person or authorised assistant moves a vehicle under this section, the person or assistant must tell the registered operator of the vehicle where the vehicle has been moved to.

**55 Moving unattended and broken-down pt 3.2 vehicles—
harm or obstruction—driver need not be qualified or
licensed**

- (1) This section applies if an authorised person or authorised assistant may move a vehicle under section 54.
- (2) The authorised person may drive the vehicle even though the person is not qualified to drive the vehicle, if the person believes on reasonable grounds that there is no one else in or near the vehicle who is more capable of driving it than the authorised person and who is fit and willing to drive it.
- (3) The authorised assistant may drive the vehicle even though the assistant is not qualified to drive the vehicle, if the authorised person believes on reasonable grounds that there is no one else in or near the vehicle who is more capable of driving it than the assistant and who is fit and willing to drive it.
- (4) If an authorised person or authorised assistant is driving a vehicle under this section, this Act and the road transport legislation do not apply to the person or assistant to the extent that they require the person or assistant to be licensed or otherwise authorised to drive the vehicle.

Note 1 The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

Note 2 Licensing of drivers is dealt with in the *Road Transport (Driver Licensing) Act 1999* (see especially s 31).

Note 3 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).

(5) In this section:

authorised assistant—see section 54 (3).

56 Driving pt 3.2 vehicles—div 3.2.3—driver need not be authorised

(1) It is immaterial that an authorised person or authorised assistant driving a vehicle under this division is not authorised to drive the vehicle by the operator of the vehicle.

(2) In this section:

authorised assistant—see section 54 (3).

Part 3.3 Directions to give name, records and other things

57 Direction to give name and other personal details

- (1) This section applies if an authorised person suspects on reasonable grounds that a person—
 - (a) has committed, is committing or is about to commit an offence against this Act; or
 - (b) may be able to assist in the investigation of an offence, or suspected offence, against this Act.

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 authorised person may direct the person to give the authorised person, immediately, any of the person's personal details.
- (3) If the authorised person suspects on reasonable grounds that a personal detail given by a person in response to a direction under subsection (2) is false or misleading, the authorised person may direct the person to produce evidence immediately of the correctness of the detail.
- (4) If an authorised person gives a direction under this section to a person, the authorised person must tell the person—
 - (a) the reasonable grounds for the suspicion mentioned in subsection (3); and
 - (b) that it is an offence if the person fails to comply with the direction.

- (5) This section does not affect any other provision of this Act or any other territory law that requires a person to state or give any personal details.
- (6) In this section:
personal details, for a person, means—
- (a) the person's full name and date of birth; and
 - (b) the person's home address; and
 - (c) if different from the person's home address—the address of the place where the person is living; and
 - (d) the person's business address.

Note 1 How a direction may be given is dealt with in s 63.

Note 2 General provisions about directions are in pt 3.4.

58 Offence—fail to comply with direction to give name and other personal details

- (1) A person commits an offence if the person—
- (a) is given a direction under section 57 (2) or (3); and
 - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

Note It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the authorised person did not, before giving the direction, warn the person that failure to comply with the direction is an offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

- (4) This section does not apply to a person who fails to comply with a direction to give the person's business address if—
- (a) the person did not have a business address at the time the direction was given; or
 - (b) the person's business address was not connected (directly or indirectly) with the transport of dangerous goods.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

59 Direction to produce record, device or other thing

- (1) An authorised person may, for compliance purposes, direct a person to produce—
- (a) a record required to be kept under this Act by the person; or
 - (b) a record required to be kept under this Act in the person's possession or under the person's control.

Note 1 For when a function is exercised for *compliance purposes*, see s 9.

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 See also s 67 (Protection from incrimination).

- (2) The direction must state—
- (a) the record, device or other thing that is to be produced; and
 - (b) where and to whom the record, device or other thing is to be produced.

Note Section 64 deals with the time for compliance.

- (3) The authorised person may do 1 or more of the following:
- (a) inspect records, devices or other things that are produced;
 - (b) make copies of, or take extracts from, records, devices or other things that are produced;
 - (c) seize and remove records, devices or other things that are produced that the authorised person believes on reasonable grounds may on further inspection provide evidence of an offence against this Act.

Note 1 How a direction may be given is dealt with in s 63.

Note 2 General provisions about directions are in pt 3.4.

Note 3 Information obtained under this part may, for law enforcement, be given to a public authority of another jurisdiction (see s 181).

60 Offence—fail to comply with direction to produce record, device or other thing

- (1) A person commits an offence if the person—
- (a) is subject to a direction under section 59; and
 - (b) fails to comply with the direction.
- Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if the person has a reasonable excuse for failing to comply with the direction.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

61 Direction to give information

- (1) An authorised person may, for compliance purposes, direct a person involved in the transport of dangerous goods to give information to the authorised person about a vehicle or any load or equipment carried, or intended to be carried, by a vehicle.

Note For when a function is exercised for *compliance purposes*, see s 9.

- (2) Without limiting subsection (1), a direction may require someone who is associated with a particular vehicle to give information about the current or intended journey of the vehicle, including—
- (a) the location of the start or intended start of the journey; and
 - (b) the route or intended route of the journey; and
 - (c) the location of the destination or intended destination of the journey.

Note 1 How a direction may be given is dealt with in s 63.

Note 2 General provisions about directions are in pt 3.4.

Note 3 It is an offence to make a false or misleading statement or give false or misleading information (see Criminal Code, pt 3.4).

62 Offence—fail to comply with direction to give information

- (1) A person commits an offence if the person—
- (a) is subject to a direction under section 61; and
 - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.

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

- (3) This section does not apply to a person if the person did not know, and could not be reasonably expected to know or find out, the information required under the direction.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

Part 3.4 Provisions about directions

63 How direction may be given

- (1) A direction under division 3.2.2 (Directions in relation to pt 3.2 vehicles) or part 3.3 (Directions to give name, records and other things) may be given—
 - (a) orally; or
 - (b) in writing; or
 - (c) by post, telephone, facsimile, email or radio; or
 - (d) in any other way.
- (2) A direction under division 3.2.2 or part 3.3 may be given to a driver—
 - (a) orally; or
 - (b) by means of a sign or signal (electronic or otherwise); or
 - (c) in any other way.
- (3) However, a direction under section 43 (Direction to produce document etc) or section 57 (Direction to give name and other personal details) may only be given—
 - (a) orally; or
 - (b) in writing.
- (4) This section does not apply in relation to a direction under section 51 (Direction in relation to pt 3.2 vehicle—dangerous situation).

64 Direction to state time for compliance

- (1) If given orally, a direction under division 3.2.2 (Directions in relation to pt 3.2 vehicles) or part 3.3 (Directions to give name, records and other things) must state whether the direction is to be complied with immediately or within a stated period.
- (2) If given in writing, a direction under division 3.2.2 or part 3.3 must state the period within which the direction is to be complied with.

65 Amendment or cancellation of direction

- (1) An authorised person (including a police officer) may amend or cancel a direction given by an authorised person other than a police officer under division 3.2.2 (Directions in relation to pt 3.2 vehicles) or part 3.3 (Directions to give name, records and other things).
- (2) A police officer may amend or cancel a direction given by a police officer under division 3.2.2 or part 3.3.

66 Direction may be given under more than 1 provision

- (1) An authorised person may, on the same occasion, give directions under 1 or more provisions of division 3.2.2 (Directions in relation to pt 3.2 vehicles) or part 3.3 (Directions to give name, records and other things).
- (2) Without limiting subsection (1), an authorised person may, in the course of exercising a function under a provision of division 3.2.2 or part 3.3, give—
 - (a) further directions under the provision; or
 - (b) directions under 1 or more other provisions of division 3.2.2 or part 3.3.

67 Protection from incrimination

- (1) A person is not excused from a requirement to comply with a direction under division 3.2.2 (Directions in relation to pt 3.2 vehicles) or part 3.3 (Directions to give name, records and other things) on the ground that complying with the requirement might incriminate the person or make the person liable to a penalty.
- (2) However, the following is not admissible in evidence against the person in a criminal proceeding (except a proceeding for an offence against division 3.2.2 or part 3.3):
 - (a) a statement made or any information or answer given or provided by an individual in compliance with a direction under division 3.2.2 or part 3.3;
 - (b) information directly or indirectly derived from a statement, information or answer mentioned in paragraph (a).
- (3) Any document produced by a person in compliance with a direction under division 3.2.2 or part 3.3, is not inadmissible in evidence against the person in a criminal proceeding on the ground that the document might incriminate the person.

Note The Legislation Act, s 170 deals with the application of the privilege against selfincrimination.

Part 3.5 Enforcement

Note This part authorises—

- (a) pt 3.2 vehicles to be entered, inspected and searched; and
- (b) premises occupied or controlled by a person involved in the transport of dangerous goods to be entered, inspected and searched; and
- (c) vehicles at the premises to be entered, inspected and searched; and
- (d) other premises and vehicles (including pt 3.2 vehicles) to be entered, inspected and searched.

Division 3.5.1 Definitions—pt 3.5

68 Definitions—pt 3.5

In this part:

at premises includes in or on the premises.

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.

occupier, of premises or a vehicle, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises or vehicle; and
- (b) a person apparently in charge of the premises or vehicle.

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

warrant means a warrant issued under division 3.5.5 (Search warrants).

Division 3.5.2 Powers of authorised people in relation to pt 3.2 vehicles

69 Application—div 3.5.2

This division applies in relation to a part 3.2 vehicle and driver to which part 3.2 applies.

Note See s 38.

70 Power of authorised people to enter and inspect pt 3.2 vehicles

- (1) An authorised person may, for compliance purposes, enter and inspect a part 3.2 vehicle.

Note For when a function is exercised for *compliance purposes*, see s 9.

- (2) Without limiting subsection (1), the authorised person may do 1 or more of the following:
- (a) weigh, test, measure or take photographs of the vehicle, any part of the vehicle or the vehicle's equipment or load;
 - (b) take, in accordance with section 104 (Sample-taking procedure), a sample of any part of the vehicle's load;
 - (c) check the existence or details of, or take photographs of, placards or other information required under this Act to be displayed in the vehicle or any load in it;
 - (d) inspect and take copies of or extracts from any records that are located in the vehicle and that are required to be carried in the vehicle under this Act;

- (e) access or download information that is required to be kept under this Act and that is—
 - (i) stored electronically in equipment located in the vehicle; or
 - (ii) accessible electronically from equipment located in the vehicle.

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).

- (3) This section does not authorise the use of force, but the authorised person may, under this section, do 1 or more of the following:
 - (a) open unlocked doors and other unlocked panels and objects;
 - (b) inspect anything that has been opened or otherwise accessed;
 - (c) move, but not take away, anything that is locked up or sealed.
- (4) The authorised person may exercise a function under this section—
 - (a) at any time; and
 - (b) with or without the consent of the driver or other person apparently in charge of the vehicle, or anyone else.

71 Power of authorised people to enter and search pt 3.2 vehicles

- (1) An authorised person may, for compliance purposes, enter and search a part 3.2 vehicle if the person believes on reasonable grounds that—
 - (a) the vehicle has been used, is being used, or is likely to be used, to commit an offence against this Act; or

- (b) the vehicle has been or may have been involved in a dangerous situation.

Note 1 For when a function is exercised for *compliance purposes*, see s 9.

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 **Dangerous situation**—see the dictionary.

- (2) The authorised person may form the necessary belief during or after an inspection of the vehicle or independently of an inspection.
- (3) Without limiting subsection (1), the authorised person may do 1 or more of the following:
- (a) search for evidence of an offence against this Act;
 - (b) search for and inspect a record, device or other thing that relates to the vehicle, any part of the vehicle or the vehicle's equipment or load and that are located in the vehicle;
 - (c) take copies of or extracts from 1 or more of the following:
 - (i) any records that are located in the vehicle and that are required to be carried in the vehicle under this Act;
 - (ii) any transport documentation located in the vehicle;
 - (iii) any other record, or any readout of other data obtained from a device or thing, located in the vehicle that the authorised person believes on reasonable grounds provides, or may on further inspection provide, evidence of an offence against this Act;
 - (d) take, in accordance with section 104 (Sample-taking procedure), a sample of any part of the vehicle's load.
- (4) The authorised person may exercise a function under this section—
- (a) at any time; and

- (b) with or without the consent of the driver or other person apparently in charge of the vehicle, or anyone else.
- (5) The power to search a vehicle under this section does not include a power to search a person.
- (6) The authorised person may seize and remove a record, device or other thing from the vehicle that the person believes on reasonable grounds provides, or may on further inspection provide, evidence of an offence against this Act.
- (7) The authorised person may use reasonable force in the exercise of a function under this section.
- (8) However, only a police officer may use force against a person.

Division 3.5.3 General powers of authorised people

72 Power to enter premises and vehicles

- (1) For compliance purposes or otherwise for this Act, an authorised person may—
 - (a) at any reasonable time, enter premises or a vehicle that the public is entitled to use or that are open to the public (whether or not on payment); or
 - (b) at any reasonable time, enter premises occupied or controlled by a person involved in the transport of dangerous goods, and enter any vehicle at the premises; or
 - (c) at any time, enter premises or a vehicle with the occupier's consent; or
 - (d) enter premises or a vehicle in accordance with a warrant; or

- (e) at any time, enter premises or a vehicle if the authorised person suspects on reasonable grounds that the circumstances are so serious and urgent that immediate entry to the premises or vehicle without the authority of a warrant is necessary.

Note 1 For when a function is exercised for *compliance purposes*, see s 9.

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).

- (2) However, subsection (1) (a) or (b) does not authorise entry into a part of premises that is being used for residential purposes.
- (3) An authorised person may, without the consent of the occupier of premises or a vehicle, enter the following land to ask for consent to enter the premises or vehicle:
 - (a) land that is around, or part of, the premises;
 - (b) land that is around the vehicle.
- (4) To remove any doubt, an authorised person may enter premises or a vehicle under subsection (1) without payment of an entry fee or other charge.
- (5) For subsection (1) (d) and (e), the authorised person may enter premises or a vehicle with any reasonable and necessary force and assistance.
- (6) However, only a police officer may use force against a person.

73 Production of identity card

An authorised person must not remain at premises or in a vehicle entered under this division if the person does not produce the person's identity card when asked by the occupier.

74 Consent to entry

- (1) When seeking the consent of an occupier of premises or a vehicle to enter the premises or vehicle under section 72 (1) (c), an authorised person must—
 - (a) produce the person’s identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything seized under this division may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the authorised person must ask the occupier to sign a written acknowledgment (an *acknowledgement of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this division may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised person must immediately give a copy to the occupier.
- (4) A court must find that an occupier did not consent to entry to the premises or a vehicle by the authorised person under this division if—
 - (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and

- (b) an acknowledgment of consent is not produced in evidence;
and
- (c) it is not proved that the occupier consented to the entry.

75 General powers on entry to premises and vehicles

- (1) An authorised person who enters premises or a vehicle under this division (whether with the occupier's consent, under a warrant or otherwise) may, for compliance purposes or otherwise for this Act, do 1 or more of the following in relation to the premises or vehicle or anything at the premises or in the vehicle:
 - (a) inspect or examine;
 - (b) take measurements or conduct tests;
 - (c) take samples;
 - (d) take photographs, films, or audio, video or other recordings;
 - (e) use photocopying equipment at the premises to copy any records or other material;
 - (f) require the occupier, or anyone at the premises, or anyone in or near the vehicle, to give the authorised person reasonable assistance to exercise a power under this division.

Note 1 For when a function is exercised for **compliance purposes**, see s 9.

Note 2 The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

Note 3 For the power to enter, inspect and search pt 3.2 vehicles, see div 3.5.2 (Powers of authorised people in relation to pt 3.2 vehicles).

Note 4 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) Also, an authorised person who enters premises or a vehicle under a warrant may search the premises or vehicle and anything at the premises or in the vehicle.

- (3) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (f).

Maximum penalty: 50 penalty units.

76 Direction to give assistance

- (1) An authorised person may direct a person who is involved in the transport of dangerous goods to give reasonable assistance to the authorised person to allow the authorised person effectively to exercise a function in relation to goods with which the person is involved.
- (2) Without limiting subsection (1), the assistance may include helping the authorised person to do 1 or more of the following:
- (a) find and gain access to a record or information relating to a vehicle, including but not limited to—
 - (i) a record or information required to be kept in a vehicle; or
 - (ii) a record or information in a useable form to find out its compliance with requirements under this Act;
- 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).
- (b) find and gain access to electronically stored information;
 - (c) weigh or measure—
 - (i) all or part of a vehicle; or
 - (ii) all or part of a vehicle's equipment or load;
 - (d) operate equipment or facilities for a purpose relevant to the function being or proposed to be exercised;
 - (e) give access to photocopying equipment to copy any records or other material;
 - (f) take a sample of any substance or packaging.

- (3) This section authorises the giving of a direction to run the engine of a vehicle, but not otherwise to drive the vehicle.
- (4) A direction—
 - (a) may only be given in relation to a function under this Act (the *principal function*) while the principal function can lawfully be exercised; and
 - (b) ceases to be operative if the principal function ceases to be exercisable.
- (5) A direction—
 - (a) may be given orally, in writing or in any other way; and
 - (b) if not given in person—may be sent or transmitted by post, telephone, fax, email, radio or in any other way.

77 Offence—fail to comply with direction to give assistance

- (1) A person commits an offence if the person—
 - (a) is given a direction under section 76; and
 - (b) fails to comply with the direction.

Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a person if—
 - (a) the direction is unreasonable; or
 - (b) without limiting paragraph (a), the direction or its subject matter is outside the scope of the business or other activities of the person.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

- (4) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that—
- (a) the defendant took reasonable steps to comply with the direction; and
 - (b) it was not possible for the defendant to comply with the direction because of an act or event over which the defendant had no control.

Note The defendant has a legal burden in relation to the matters mentioned in s (4) (see Criminal Code, s 59).

78 Use of assistants and equipment

- (1) An authorised person may exercise powers under this part with the aid of the assistants and equipment that the person considers reasonably necessary in the circumstances.
- (2) Powers that may be exercised by an authorised person under this part may be exercised by an assistant authorised and supervised by the authorised person, but only if the authorised person considers that it is reasonably necessary in the circumstances that the powers be exercised by an assistant.

79 Use of equipment to examine and process things

- (1) Without limiting section 78, an authorised person exercising a power under this part may bring to, or on to, premises or a vehicle any equipment reasonably necessary to examine or process things found at the premises or in the vehicle to decide whether they are things that may be seized.

- (2) The authorised person, or a person assisting the authorised person, may operate equipment already at the premises or in the vehicle to carry out the examination or processing of a thing found at the premises or in the vehicle, to decide whether it is a thing that may be seized, if the authorised person or person assisting believes on reasonable grounds that—
- (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or thing.

80 Use and seizure of electronic equipment

- (1) This section applies if—
- (a) an authorised person enters premises or a vehicle under section 72 (Power to enter premises and vehicles); and
 - (b) a thing found in, on or at the premises or vehicle is, or includes, a disk, tape or other device for the storage of information; and
 - (c) equipment in, on or at the premises or vehicle may be used with the disk, tape or other storage device; and
 - (d) the authorised person believes on reasonable grounds that the information stored on the disk, tape or other storage device is relevant to deciding whether an offence has been committed.
- (2) The authorised person, or a person assisting the authorised person, may operate the equipment to access the information.

- (3) If the authorised person, or a person assisting the authorised person, finds that a disk, tape or other storage device in, on or at the premises or vehicle contains information of a kind mentioned in subsection (1) (d), the authorised person, or a person assisting the authorised person, may—
- (a) put the information in documentary form and seize the document produced; or
 - (b) copy the information to another disk, tape or other storage device and remove the storage device from the premises or vehicle; or
 - (c) if it is not practicable to put the information in documentary form or to copy the information—seize the disk, tape or other storage device and the equipment that allows the information to be accessed.
- Note* A record, device or other thing seized under this part, or information obtained under this part may, for law enforcement, be given to a public authority, including a public authority of another jurisdiction (see s 181).
- (4) An authorised person, or a person assisting an authorised person, must not operate or seize equipment under this section unless the authorised person, or person assisting, believes on reasonable grounds that the operation or seizure of the equipment can be carried out without damage to the equipment.

81 Power to seize things

- (1) An authorised person who enters premises or a vehicle under this division with the occupier's consent may seize anything at the premises, or in the vehicle, if—
 - (a) the authorised person believes on reasonable grounds that the thing is connected with an offence against this Act; and

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).
 - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised person who enters premises or a vehicle under a warrant may seize anything at the premises, or in the vehicle, that the authorised person is authorised to seize under the warrant.
- (3) An authorised person who enters premises or a vehicle under this division (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises, or in the vehicle, if the authorised person believes 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 authorised person who enters premises or a vehicle under this division (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises, or in the vehicle, if the authorised person believes on reasonable grounds that the thing—
 - (a) puts the health or safety of people at risk; or
 - (b) may cause damage to property or the environment.

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

Note A record, device or other thing seized under this part, or information obtained under this part may, for law enforcement, be given to a public authority, including a public authority of another jurisdiction (see s 181).

82 Removal of seized thing

An authorised person who seizes a thing under this division may remove the thing from the premises where, or vehicle from which, it was seized to another place.

83 Receipt for seized thing

- (1) As soon as practicable after an authorised person seizes a thing (other than a sample) under this part, the person 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 authorised person must leave the receipt, secured conspicuously, at the premises where the thing was seized or on the vehicle from which the thing was seized.
- (3) The receipt must include the following:
- (a) a description of the thing seized;
 - (b) why the thing was seized;
 - (c) the authorised person's name, and information about how to contact the person;
 - (d) if the thing is removed from the premises or vehicle—the address where the thing is to be taken.

84 Power to destroy unsafe thing

- (1) This section applies to anything inspected or seized under this part by an authorised person if the person is satisfied on reasonable grounds that the thing—
 - (a) puts the health or safety of people at risk; or
 - (b) is likely to cause damage to property or the environment.
- (2) The authorised person may—
 - (a) destroy or otherwise dispose of the thing; or
 - (b) if the thing is at premises—give a written direction to an occupier of the premises to destroy or otherwise dispose of the thing; or
 - (c) if the thing is in a vehicle—give a written direction to an occupier of the vehicle to destroy or otherwise dispose of the thing.
- (3) The direction 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 must comply with a direction given to the person under subsection (2) (b) or (c).

Maximum penalty: 50 penalty units.
- (5) An offence against this section is a strict liability offence.

- (6) Costs incurred by the Territory in relation to the disposal of a thing under subsection (2) (a) 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) if the thing was at premises when inspected or seized—each occupier of the premises;
 - (c) if the thing was in a vehicle when inspected or seized—each registered operator of the vehicle.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

Division 3.5.4 Embargo notices

85 Embargo notices

- (1) This section applies if—
- (a) an authorised person is authorised to seize something under this part; and
 - (b) the thing cannot, or cannot readily, be physically seized and removed.
- (2) The authorised person may issue a notice (an *embargo notice*) forbidding the movement, sale, leasing, transfer, deletion of information from or other dealing with the thing, or part of the thing, without the written consent of the authorised person or responsible person for the authorised person.
- (3) The embargo notice must—
- (a) contain the particulars (if any) prescribed by regulation; and
 - (b) list the activities that it forbids; and
 - (c) set out a copy of section 87 (Offence—fail to prevent someone else doing something forbidden by embargo notice).

- (4) The authorised person issues the notice—
 - (a) by giving a copy of the notice to the person with responsibility for the premises or vehicle where the embargoed thing is; or
 - (b) if the person with responsibility cannot be located after reasonable steps have been taken to locate the person—by attaching a copy of the notice to the embargoed thing in a prominent position.
- (5) Despite anything in any other Act, a sale, lease or transfer or other dealing with an embargoed thing, or part of an embargoed thing, in contravention of an embargo notice is void.

86 Offence—fail to comply with embargo notice

- (1) A person commits an offence if—
 - (a) the person knows that an embargo notice is in force for a thing; and
 - (b) the person—
 - (i) does something that is forbidden by the embargo notice; or
 - (ii) instructs someone else to do something that is forbidden by the embargo notice.

Maximum penalty: 100 penalty units.

- (2) Strict liability applies to subsection (1) (b).
- (3) This section does not apply to a person if—
 - (a) the offence is made up of moving the thing or part of the thing; and
 - (b) the person—
 - (i) moves the thing, or part of the thing, to protect or preserve the thing; or

- (ii) instructs someone else to move the thing, or part of the thing to protect or preserve the thing; and
- (c) the person told the authorised person who issued the embargo notice about the move, and of the new location of the thing or part of the thing, within 48 hours after the move.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

87 Offence—fail to prevent someone else doing something forbidden by embargo notice

- (1) A person commits an offence if—
 - (a) an embargo notice has been given to the person; and
 - (b) the person fails to take reasonable steps to prevent someone else from doing something forbidden by the notice.

Maximum penalty: 100 penalty units.

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

88 Revocation of embargo notice

An embargo notice in force for a thing must be revoked if, had the thing been seized under this part, it would have to be returned to its owner, or reasonable compensation paid by the Territory to the owner for its loss, under section 98 (Return of seized thing).

Division 3.5.5 Search warrants

89 Warrants generally

- (1) An authorised person may apply to a magistrate for a warrant to enter and search premises or a vehicle.
- (2) The application must be sworn and state the grounds on which the warrant is sought.

Note Swear an oath includes make an affirmation (see Legislation Act, dict, pt 1, def *swear*).

- (3) The magistrate may refuse to consider the application until the authorised person 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

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).

- (b) the thing or activity—

- (i) is, or is being engaged in, at the premises or in the vehicle; or

- (ii) may be, or may be engaged in, at the premises or in the vehicle within the next 3 days.

- (5) Also, the magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

- (a) a vehicle has been, or may have been, involved in an offence against this Act or a dangerous situation; and

Note **Dangerous situation**—see the dictionary.

- (b) either—
- (i) the vehicle is, or has been, located at the premises; or
 - (ii) the premises are, or may be, connected (directly or indirectly) with the vehicle or part of the vehicle's equipment or load.
- (6) The warrant must state—
- (a) that an authorised person may, with any reasonable and necessary force and assistance, enter the premises or vehicle and exercise the person's powers under this part; and
- Note 1* An authorised person may enter the premises with any reasonable and necessary force and assistance (see s 72 (5)). However, only a police officer may use force against a person (see s 72 (6)).
- Note 2* An authorised person's powers include the power to search the premises or vehicle (see s 75 (2)).
- (b) the reason for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises or vehicle may be entered; and
 - (e) the date (within 3 days after the day the warrant is issued) that the warrant ends.
- (7) 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.

90 Warrants—application made other than in person

- (1) An authorised person may apply for a warrant by phone, fax, email, radio or other form of communication if the person considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised person may apply for the warrant before the application is sworn.

91 Warrants—issue on application made other than in person

- (1) If the magistrate issues the warrant, the magistrate must immediately do either of the following if it is practicable to do so:
 - (a) fax a copy to the authorised person;
 - (b) email a scanned copy to the authorised person.
- (2) If it is not practicable to fax or email a copy to the authorised person—
 - (a) the magistrate must tell the person—
 - (i) the date and time the warrant was issued; and
 - (ii) the warrant’s terms; and
 - (b) the authorised person 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.

- (3) The faxed or emailed copy of the warrant, or the warrant form properly completed by the authorised person, authorises the entry and exercise of the person's powers under the warrant.

Note Authorised people have additional powers under this part (see eg, s 75 and s 81 (3)).

- (4) The authorised person must, at the first reasonable opportunity, send to the magistrate—
- (a) the sworn application; and
 - (b) if the person completed a warrant form—the completed warrant form.
- (5) On receiving the documents, the magistrate must attach them to the warrant.
- (6) A court must find that a power exercised by an authorised person was not authorised by a warrant under this section if—
- (a) the question arises in a proceeding in 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.

92 Warrants—announcement before entry

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

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

93 Details of warrant to be given to occupier etc

- (1) If the occupier of premises or a vehicle, or someone else who apparently represents the occupier, is present at the premises or in the vehicle while a warrant is being executed, the authorised person or anyone assisting must make available to the person—
 - (a) a copy of the warrant or warrant form; and
 - (b) a document setting out the rights and obligations of the person.
- (2) In this section:
warrant form—see section 91 (2) (b) (Warrants—issue on application made other than in person).

94 Occupier entitled to observe search etc

- (1) If the occupier of premises or a vehicle, or someone else who apparently represents the occupier, is present at the premises or in the vehicle while a warrant is being executed, the 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 purpose of the search.
- (3) This section does not prevent 2 or more areas of the premises or vehicle being searched at the same time.

95 Moving things to another place for examination or processing under warrant

- (1) A thing found at premises, or in a vehicle, entered under a 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) the occupier of the premises or vehicle agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised person may apply to a magistrate for an extension of time if the person believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised person must give notice of the application to the occupier of the premises or vehicle, and the occupier is entitled to be heard on the application.

- (5) If a thing is moved to another place under this section, the authorised person must, if practicable—
 - (a) tell the occupier of the premises or vehicle the address of the place where, and time when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier’s representative to be present during the examination or processing.
- (6) The provisions of this division relating to the issue of warrants apply, with any necessary changes, to the giving of an extension under this section.

Division 3.5.6 Dealing with seized things

96 Meaning of *responsible person*—div 3.5.6

In this division:

responsible person, in relation to a thing seized by an authorised person, means—

- (a) for an authorised person other than a police officer—the appointing competent authority; or
- (b) for a police officer—a senior police officer.

97 Access to seized thing

- (1) A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may, at any reasonable time—
 - (a) inspect it; and
 - (b) if it is a document—take extracts from it or make copies of it.

- (2) This section does not apply to—
- (a) a thing seized under section 81 (4) (which is about seizing things that put the health or safety of people at risk or may cause damage to property or the environment); or
 - (b) a thing if possession of it by the person otherwise entitled to inspect it would be an offence.

98 Return of seized thing

- (1) If a thing was seized under this part and 1 of the circumstances set out in section 99 applies—
- (a) the thing must be returned to its owner; or
 - (b) if the thing cannot be returned to its owner because it is lost—reasonable compensation must be paid by the Territory to the owner.

Note 1 Lost includes destroyed and spoiled (see s (4)).

Note 2 The thing must be returned, or compensation paid, as soon as possible (see Legislation Act, s 151B).

- (2) However, a thing is not required to be returned, or reasonable compensation is not required to be paid, if—
- (a) the thing is the subject of an application to a court, or a court order, in relation to the seizure or forfeiture of the thing; and
 - (b) the application or order is made in relation to the thing under another law in force in the ACT.

Example

An application for the forfeiture of the seized thing is made to a court under the *Confiscation of Criminal Assets Act 2003*.

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) Also, a thing is not required to be returned, or reasonable compensation is not required to be paid, if—
- (a) the thing was seized under section 81 (4) (which is about seizing things that put the health or safety of people at risk or may cause damage to property or the environment); or
 - (b) the responsible person believes on reasonable grounds that the only practical use of the thing in relation to the premises where the thing was seized or vehicle from which it was seized would be an offence against this Act or another law in force in the ACT; or
 - (c) possession of it by its owner would be an offence.
- (4) In this section:
lost includes destroyed and spoiled.

99 Circumstances—s 98

- (1) The circumstances for section 98 are as follows:
- (a) an infringement notice for an offence relating to the thing is not served on the owner within 1 year after the day the thing was seized, and a prosecution for an offence relating to the thing—
 - (i) is not started within the 1-year period; or
 - (ii) is started within the 1-year period but the offence is finally dealt with in the owner's favour;

Examples—offence finally dealt with in owner's favour

- 1 a court finds the owner not guilty of the offence
- 2 a court finds the owner guilty of the offence, the owner appeals against the conviction and the appeal court sets the conviction aside
- 3 a court permanently stays the criminal proceeding against the owner

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).

- (b) an infringement notice for an offence relating to the thing is served on the owner within 1 year after the day the thing was seized, the infringement notice is withdrawn and a prosecution for an offence relating to the thing—
 - (i) is not started within the 1-year period; or
 - (ii) is started within the 1-year period but the offence is finally dealt with in the owner's favour;
- (c) an infringement notice for an offence relating to the thing is served on the owner and not withdrawn within 1 year after the day the thing was seized, liability for the offence is disputed in accordance with the *Magistrates Court Act 1930*, section 132 (Disputing liability for infringement notice offence) and an information—
 - (i) 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) is laid in the Magistrates Court against the person for the offence within the 60-day period but the offence is finally dealt with in the owner's favour;
- (d) an infringement notice for an offence relating to the thing is served on the owner within 1 year after the day the thing was seized, and the infringement notice penalty for the offence is paid;
- (e) the responsible person becomes satisfied that there is no offence against this Act with which the thing is connected;

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).
- (f) the responsible person decides not to have an infringement notice served for the offence;
- (g) the responsible person or prosecutor decides not to prosecute.

- (2) In this section:

infringement notice penalty—see the *Magistrates Court Act 1930*, section 117.

100 Application for order disallowing seizure

- (1) A person claiming to be entitled to anything seized under this part may apply to the Magistrates Court for an order disallowing the seizure within 10 days after the day the thing was seized.
- (2) However, this section does not apply to a thing seized under section 81 (4) (which is about the seizure of a thing that puts the health or safety of people at risk or may cause 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 responsible person.
- (4) The responsible person is entitled to appear as a respondent at the hearing of the application.

101 Order disallowing seizure

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 100 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if 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 also make 1 or more of the following orders:
- (a) an order directing the responsible person to return the thing to the applicant or to someone else who 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.

102 Forfeiture of seized thing

- (1) This section applies if—
- (a) anything seized under this part is not destroyed or otherwise disposed of under section 84 (Power to destroy unsafe thing) is not required to, or cannot, be returned under section 98 (Return of seized thing); and
 - (b) an application for disallowance of the seizure under section 100 (Application for order disallowing seizure)—
 - (i) is not made within 10 days after the day the thing was seized; or
 - (ii) is made within the 10-day period, but the application is refused or withdrawn before a decision in relation to the application is made.
- (2) If this section applies to the seized thing, the thing—
- (a) is forfeited to the Territory; and
 - (b) may be sold, destroyed or otherwise disposed of as the responsible person directs.

103 Cost of disposal of forfeited thing

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

Note 1 **Found guilty**—see the Legislation Act, dictionary, pt 1.

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).

- (2) Costs incurred by the Territory in relation to the disposal of the thing are a debt owing to the Territory by the person.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177).

- (3) In this section:

dispose of a thing includes store the thing.

Division 3.5.7 Enforcement—miscellaneous

104 Sample-taking procedure

- (1) An authorised person may take a sample from premises or a vehicle under this part only if—
 - (a) it is safe to take the sample; and
 - (b) the taking of the sample will not result in a dangerous situation.

Note **Dangerous situation**—see the dictionary.

- (2) Unless it is not safe to do so, the authorised person must, immediately after taking a sample of a substance, divide the sample into the following parts:
 - (a) 1 part that is to be kept for future comparison;
 - (b) 1 part that is to be given to the person from whom the sample is taken;
 - (c) if the person intends to have the sample tested or analysed—1 part for the testing or analysis.
- (3) Immediately after dividing the sample, the authorised person must—
 - (a) put each part of the sample in packaging in a way that prevents the contamination of the part; and
 - (b) mark or label the packaging in a way that allows the part to be identified; and
 - (c) give 1 of the parts to the person from whom the sample is taken.
- (4) If an authorised person intends to take a sample of any packaging from premises or a vehicle, before removing the packaging from the premises or vehicle, the person must give a written receipt that identifies the sample to the person from whom the sample is taken.

- (5) If an authorised person finds many packages at premises or in a vehicle, and the packages appear to be identical, the person may take 1 or more of the packages as samples.
- (6) Immediately after taking the sample packages, the authorised person must—
 - (a) put each package in packaging in a way that prevents contamination of the package; and
 - (b) mark or label the packaging in a way that allows the package to be identified; and
 - (c) give 1 of the packages to the person from whom the sample is taken.
- (7) If a person who is offered part of a sample under subsection (3) (c), or a sample package under subsection (6) (c), refuses to accept it, the authorised person must keep the part or package.
- (8) The authorised person must give the part or package to the person to whom it is offered if the person later asks the person for it.
- (9) In this section:
person from whom the sample is taken means—
 - (a) if the sample is taken from premises—the occupier of the premises; or
 - (b) if the sample is taken from a vehicle—the driver of the vehicle, or the person apparently in charge of the vehicle.

105 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an authorised person must take reasonable steps to ensure that the authorised person, and anyone assisting the authorised person, causes as little inconvenience, detriment and damage as practicable.

- (2) If an authorised person, or anyone assisting an authorised person, damages anything in the exercise or purported exercise of a function under this part, the authorised person must give written notice of the particulars of the damage to the person the authorised person believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises or to a vehicle entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises or on the vehicle.

106 Restoring vehicle, premises etc to original condition after action taken

- (1) This section applies if—
 - (a) an authorised person, or anyone assisting an authorised person, takes action in the exercise or purported exercise of a function under this part in relation to premises or a vehicle or a vehicle's equipment or load; and
 - (b) damage is caused by the unreasonable exercise of the function or by the use of force that is not authorised under this part.
- (2) The authorised person, or person assisting, must take reasonable steps to return the premises, vehicle, equipment or load to the condition it was in immediately before the action was taken.

107 Compensation for exercise of enforcement powers

- (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 part by an authorised person or anyone assisting an authorised person.
- (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 100 (Application for order disallowing seizure); or

- (c) an offence against this Act brought against the person making the claim for compensation.

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).

- (3) A court may order the payment of reasonable compensation for the loss or expense only if 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.

Part 3.6 General administrative penalties

Division 3.6.1 Improvement notices

108 Definitions—div 3.6.1

In this division:

due date and time, for an improvement notice—

- (a) means the date and time (if any) stated in the improvement notice; and
- (b) if the date and time (if any) is extended under section 110 (Extensions of date or time to comply with improvement notices)—includes the extended date and time.

offender—see section 109.

109 Improvement notices

- (1) An authorised person may give a person (the *offender*) a written notice (an *improvement notice*) if the authorised person believes on reasonable grounds that the offender—
 - (a) has failed to comply with a provision of this Act; or
 - (b) is failing to comply with a provision of this Act; or
 - (c) is likely to fail to comply with a provision of this Act.

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) An improvement notice may require the offender to remedy—
 - (a) the failure to comply or likely failure to comply; or
 - (b) the matters or activities causing the failure to comply or likely failure to comply.

- (3) Also, an improvement notice may state the method to be used to achieve the remedy.
- (4) An improvement notice must state the following:
 - (a) that the notice is issued under this section;
 - (b) that the authorised person believes on reasonable grounds that the offender has failed to comply, is failing to comply or is likely to fail to comply, with a provision of this Act;
 - (c) the reasons for the belief;
 - (d) the provision of this Act in relation to which the belief is held;
 - (e) that the offender must comply with the notice not later than the date and time (if any) stated in the notice.

Note The notice must also must comply with the requirements for reviewable decision notices which are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

- (5) The authorised person must not set a date or time for compliance with the notice unless satisfied that the date or time is reasonable, having regard to—
 - (a) the severity of any relevant risks; and
 - (b) the nature of the failure to comply or likely failure to comply.

110 Extensions of date or time to comply with improvement notices

- (1) This section applies if—
 - (a) an offender has been given an improvement notice; and
 - (b) the due date and time for the improvement notice has not passed.

- (2) An authorised person may, by written notice given to the offender, extend the due date and time for the improvement notice—
 - (a) on the person's own initiative; or
 - (b) if asked by the offender.
- (3) The due date and time may be extended more than once.

111 Offence—fail to comply with improvement notice

- (1) A person commits an offence if the person—
 - (a) is subject to an improvement notice; and
 - (b) fails to comply with a requirement of the notice.

Maximum penalty: 100 penalty units, imprisonment for 6 months or both.

- (2) This section does not apply to a person if the person has a reasonable excuse for failing to comply with the requirement.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that—
 - (a) either—
 - (i) the alleged failure to comply, or likely failure to comply, to which the improvement notice relates was remedied; or
 - (ii) the matters or activities causing the alleged failure to comply, or likely failure to comply, to which the improvement notice relates were remedied; and
 - (b) the remedy was achieved not later than the due date and time; and

- (c) the method used for achieving the remedy was different from the method stated in the improvement notice.

Note The defendant has a legal burden in relation to the matters mentioned in s (3) (see Criminal Code, s 59).

112 Amendment of improvement notices

- (1) An improvement notice given by an authorised person other than a police officer may only be amended by an authorised person other than a police officer.
- (2) An improvement notice given by a police officer may only be amended by a police officer.
- (3) An authorised person may amend an improvement notice given to a person by giving the person a written notice (an ***improvement amendment notice***) stating the terms of the amendment.
- (4) An amendment of an improvement notice is ineffective if it purports to deal with a failure to comply with a provision of this Act different from the provision dealt with in the improvement notice it purports to amend.

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).

- (5) An improvement amendment notice must state—
 - (a) the reasons for the amendment; and
 - (b) that the notice is given under this section.

Note The notice must also must comply with the requirements for reviewable decision notices which are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

113 Cancellation of improvement notices

- (1) An improvement notice given by a police officer may only be cancelled by—
 - (a) the officer; or
 - (b) a police officer who is senior in rank to the person who gave the notice; or
 - (c) the chief police officer.
- (2) An improvement notice given by an authorised person other than a police officer may only be cancelled by—
 - (a) the person; or
 - (b) the appointing competent authority.
- (3) Written notice of the cancellation of an improvement notice must be given to the person to whom the improvement notice was given.

114 Clearance certificates

- (1) An authorised person may issue a certificate (a *clearance certificate*) to the effect that a stated requirement, or all requirements, of an improvement notice have been complied with.
- (2) A stated requirement of an improvement notice ceases to be operative when the person to whom the notice was given receives a clearance certificate to the effect that—
 - (a) the requirement has been complied with; or
 - (b) all requirements of the notice have been complied with.

Division 3.6.2 Formal warnings

115 Definitions—div 3.6.2

In this division:

action includes the issue of an infringement notice.

formal warning—see section 116.

offender—see section 116.

116 Formal warnings

- (1) This section applies if an authorised person may take action against a person (the *offender*) for failure to comply with this Act.

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 authorised person may, instead of taking other action against the offender, formally warn (a *formal warning*) the offender if the person believes on reasonable grounds that—
 - (a) the offender—
 - (i) took reasonable steps to prevent the failure to comply; and
 - (ii) was unaware of the failure to comply; and
 - (b) it is appropriate to deal with the failure to comply by way of a formal warning under this section.
- (3) A formal warning must be in writing.

117 Withdrawal of formal warnings

- (1) A formal warning given by an authorised person may be withdrawn by the responsible person for the authorised person by giving the offender a notice of withdrawal not later than 21 days after the day the formal warning is given.

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) After the formal warning has been withdrawn, action may be taken against the person for the failure to comply.

Part 3.7 Prohibition notices

118 Meaning of *dangerous activity*—pt 3.7

In this part:

dangerous activity means an activity—

- (a) that relates to the transport of dangerous goods by road; and
- (b) that is happening or may happen in relation to or in the immediate vicinity of the dangerous goods; and
- (c) that creates or could create a dangerous situation or a risk to the safety of anyone.

Note *Dangerous situation*—see the dictionary.

119 Prohibition notices—general

- (1) This section applies if an authorised person believes on reasonable grounds that a dangerous activity is happening or may happen.
- (2) The authorised person may give a person who has or appears to have control over the dangerous activity a written notice (a *prohibition notice*) that prohibits the person—
 - (a) from carrying on the activity; or
 - (b) from carrying on the activity in a stated way.
- (3) A prohibition notice—
 - (a) has effect when it is given to the person or, if a later day or time is stated in the notice, on the stated day or at the stated time; and
 - (b) is in force until it is withdrawn.

120 Oral direction may be given before prohibition notice

- (1) This section applies if an authorised person believes on reasonable grounds that—
 - (a) a dangerous activity is happening or may happen; and
 - (b) that it is not reasonable or immediately possible to give a prohibition notice.
- (2) The authorised person may orally direct a person who has, or appears to have, control over the activity to do or not to do a stated act.
- (3) The authorised person must—
 - (a) state the reason for giving the direction; and
 - (b) tell the person that it is an offence if the person fails to comply with the direction.
- (4) A direction to person in relation to a dangerous activity ceases to have effect if a prohibition notice in relation to the activity is not given to the person within 5 days after the day the direction is given.

121 Offence—fail to comply with oral direction

- (1) A person commits an offence if the person—
 - (a) is given a direction under section 120; and
 - (b) fails to comply with the direction.

Maximum penalty: 500 penalty units, imprisonment for 2 years or both.
- (2) This section does not apply to a person if the person has a reasonable excuse for failing to comply with the direction.

- (3) Also, this section does not apply to a person if the authorised person did not, before giving the direction, warn the person that failure to comply with the direction is an offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) and s (3) (see Criminal Code, s 58).

122 Prohibition notices—content

- (1) A prohibition notice must—
- (a) state that the notice is a prohibition notice; and
 - (b) require the person to stop the dangerous activity or to stop carrying it out in a stated way; and
 - (c) state the basis for the authorised person’s belief that the activity is a dangerous activity; and
 - (d) if the authorised person believes that the dangerous activity involves a contravention of a law, state the law and the relevant provision of the law; and
 - (e) state the penalty for failing to comply with the notice.

Note The notice must also must comply with the requirements for reviewable decision notices which are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

- (2) A prohibition notice may include a direction about the measures to be taken to minimise or eliminate the risk caused by the dangerous activity.
- (3) A direction may offer a choice of ways to minimise or eliminate the risk caused by the dangerous activity.
- (4) A prohibition notice that prohibits the carrying out of an activity in a stated way may do so by stating—
- (a) a place where the activity may not be carried out; or
 - (b) any thing that may not be used in connection with the activity;
- or

- (c) any procedure that may not be followed in connection with the activity.

123 Offence—fail to comply with prohibition notice

- (1) A person commits an offence if the person—
 - (a) is given a prohibition notice; and
 - (b) fails to comply with a requirement of the notice.

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

- (2) This section does not apply to a person if the person has a reasonable excuse for failing to comply with the requirement.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

124 Amendment of prohibition notices

- (1) A prohibition notice given by an authorised person other than a police officer may only be amended by an authorised person other than a police officer.
- (2) A prohibition notice given by a police officer may only be amended by a police officer.
- (3) An authorised person may amend a prohibition notice given to a person by giving the person a written notice stating—
 - (a) the terms of the amendment; and
 - (b) the reasons for the amendment; and
 - (c) that the notice is given under this section.

Note The notice must also must comply with the requirements for reviewable decision notices which are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

- (4) An amendment of a prohibition notice is ineffective if it purports to deal with a failure to comply with a provision of a law different from the provision dealt with in the prohibition notice it purports to amend.

125 Withdrawal of prohibition notices

- (1) A prohibition notice must be withdrawn if the activity the subject of the notice is not, or is no longer, a dangerous activity.
- (2) A prohibition notice given by a police officer may only be withdrawn by—
- (a) a police officer who is senior in rank to the person who gave the notice; or
 - (b) the chief police officer.
- (3) A prohibition notice given by an authorised person other than a police officer may only be withdrawn by the appointing competent authority.
- (4) Written notice of the withdrawal of a prohibition notice must be given to the person to whom the prohibition notice was given.

126 Proceeding for offence not affected by prohibition notice

The service, amendment or withdrawal of a prohibition notice does not affect any proceeding for an offence against this Act.

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).

Part 3.8 General court-based penalties

Division 3.8.1 Preliminary

127 Meaning of *associate*—pt 3.8

- (1) For this part, a person is an *associate* of someone else if—
- (a) 1 of them is a spouse, parent, brother, sister or child of the other; or
 - (b) both are members of the same household; or
 - (c) they are partners; or
 - (d) both are trustees or beneficiaries of the same trust, or 1 is a trustee and the other is a beneficiary of the same trust; or
 - (e) 1 person is a corporation and the other person is a director or member of the governing body of the corporation; or
 - (f) 1 person is a corporation (other than a public company whose shares are listed on a stock exchange) and the other person is a shareholder in the corporation; or
 - (g) they are related bodies corporate; or
 - (h) a chain of relationships can be traced between them under 1 or more of paragraphs (a) to (g).

- (2) In this section:

beneficiary, of a trust, includes an object of a discretionary trust.

related body corporate—see the Corporations Act, section 9 (Definitions).

128 Orders under pt 3.8—general

If 1 or more courts make orders under this part that result in both a supervisory intervention order and an exclusion order being in force at the same time in relation to the same person, the supervisory intervention order has no effect while the exclusion order has effect.

Note Supervisory intervention orders are dealt with in div 3.8.4.
Exclusion orders are dealt with in div 3.8.5.

Division 3.8.2 Commercial benefits penalty orders

129 Commercial benefits penalty orders

- (1) A court that convicts a person, or finds a person guilty, of an offence against this Act may, on the application of the prosecutor or a competent authority, make an order (a *commercial benefits penalty order*) under this section.

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 court may make a commercial benefits penalty order requiring the person to pay, as a fine, an amount not more than 3 times the amount estimated by the court to be the gross commercial benefit that—
 - (a) was received or receivable, by the person or an associate of the person, from the commission of the offence; or
 - (b) for a journey that was interrupted or not begun because of action taken by an authorised person in relation to the commission of the offence—would have been received or receivable, by the person or an associate of the person, from the commission of the offence had the journey been completed.

Note The court's estimate of gross commercial benefit is dealt with in s 130.

- (3) However, the court must not make a commercial benefits penalty order for an amount that is more than the maximum amount if the offence in relation to which the order is made is a strict liability offence.
- (4) Nothing in this section prevents the court from ordering payment of an amount that is—
- (a) less than 3 times the estimated gross commercial benefit; or
 - (b) less than the estimated gross commercial benefit.
- (5) In this section:
- maximum amount* means the amount that, if it were the amount of a penalty for an offence expressed as a number of penalty units, is 50 penalty units.

130 Commercial benefits penalty orders—estimating gross commercial benefit

- (1) In estimating the gross commercial benefit that was, or would have been, received or receivable from the commission of the offence, the court may take into account—
- (a) benefits of any kind, whether monetary or otherwise; and
 - (b) any other matter that the court considers relevant.

Examples—par (b)

- 1 the value of goods involved in the offence
- 2 the distance over which goods involved in the offence were, or were to be, carried

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, in estimating the gross commercial benefit that was, or would have been, received or receivable from the commission of the offence, the court must disregard any cost, expense or liability incurred by the person or an associate of the person.

Division 3.8.3 Licensing and registration penalties

131 Penalties involving licences

- (1) This section applies if a court convicts a driver of a vehicle, or finds a driver of a vehicle guilty, of an offence against this Act.

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 court may order either or both of the following:
- (a) that a licence the driver is required to have under a regulation is—
 - (i) cancelled; or
 - (ii) amended or suspended for a stated period;
 - (b) that the driver is disqualified from obtaining or holding a licence the driver is required to have under a regulation for a stated period.
- (3) An order under this section operates automatically and takes effect immediately or, if a later day is stated in the order, on the stated day.

132 Penalties involving vehicle registration

- (1) This section applies if the registered operator of a vehicle is convicted or found guilty by a court of an offence against this Act in relation to the vehicle.

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 court may order that the registration of the vehicle is—
- (a) cancelled; or
 - (b) suspended for a stated period.

- (3) If the court makes an order under subsection (2), the court may also make 1 or more of the following orders:
 - (a) that the registered operator is disqualified from registering the vehicle for a stated period;
 - (b) if an associate of the registered operator is involved in the commission of the offence—that the associate is disqualified from registering the vehicle for a stated period.
- (4) If the court considers that someone else who is not present in court may be substantially affected if an order is made under this section, the court may issue a summons to the person to give reasons why the order should not be made.
- (5) An order under this section operates automatically and takes effect immediately or, if a later day is stated in the order, on the stated day.

Division 3.8.4 Supervisory intervention orders

133 Supervisory intervention orders

- (1) This section applies if—
 - (a) a court convicts a person, or finds a person guilty, of an offence against this Act; and
 - (b) the prosecutor or a competent authority applies for an order under this section; and
 - (c) the court considers the person to be a systematic or persistent offender against this Act.

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 court may make an order (a *supervisory intervention order*) requiring the person to do 1 or more of the following, at the person's own expense and for a stated period not longer than 1 year:

(a) to do stated things that the court considers will improve the person's compliance with this Act or a stated provision of this Act;

Examples

- 1 appointing or removing staff to or from particular activities or positions
- 2 training and supervising staff
- 3 obtaining expert advice in relation to maintaining compliance
- 4 installing monitoring, compliance, managerial or operational equipment such as intelligent transport system equipment
- 5 implementing monitoring, compliance, managerial or operational practices, systems or procedures

Note 1 **Intelligent transport system**—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).

(b) to conduct stated monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the competent authority or a person nominated by the authority;

(c) to appoint someone else to have responsibilities—

(i) to assist the person in improving compliance with this Act or a stated provision of this Act; and

(ii) to monitor the person's performance in complying with this Act or a stated provision of this Act and in complying with the requirements of the order.

- (3) However, the court may make a supervisory intervention order only if satisfied that the order can improve the person's ability or willingness to comply with this Act, having regard to—
- (a) the offences against this Act that the person has been previously convicted or found guilty of; and
 - (b) the offences against this Act for which the person has been proceeded against by way of infringement notices that have not been withdrawn; and
 - (c) any other offences or matters that the court considers to be relevant to the conduct of the person in relation to the transport of dangerous goods.
- (4) The order may direct that any other penalty imposed for the offence by the court be suspended until the court decides, on application by the prosecutor or competent authority, that there has been a substantial failure to comply with the order.
- (5) For this section, if a person has committed at least 1 offence against this Act, the court may treat an offence that the person has committed against a corresponding law as if the offence had also been committed against this Act.

Note 1 If a court makes a supervisory intervention order, the court may also require compliance reports to be given—see s 134.

Note 2 If both a supervisory intervention order and an exclusion order are in force at the same time in relation to the same person, the supervisory intervention order has no effect while the exclusion order has effect (see s 128 (4)).

134 Supervisory intervention orders—compliance reports

- (1) This section applies if a court makes a supervisory intervention order.
- (2) The court may also require in the order that the person, at the person's own expense and for a stated period not longer than 1 year—
 - (a) give compliance reports to a competent authority, the court or both as stated in the order; or
 - (b) appoint someone else to have responsibility to give compliance reports to a competent authority, the court or both as stated in the order.
- (3) The court may state the matters that must be dealt with in a compliance report and how and when a compliance report is to be prepared and given.
- (4) The court may require that a compliance report, or parts of a compliance report, be made public, and may state how and when a compliance report is to be made public.
- (5) In this section:

compliance report, in relation to a person about whom a supervisory intervention order is made, means a report relating to—

- (a) the performance of the person in complying with—
 - (i) this Act or a provision of this Act stated in the order; and
 - (ii) the requirements of the order; and
- (b) without limiting paragraph (a)—
 - (i) things done by the person to ensure that any failure by the person to comply with this Act or the stated provision of this Act does not continue; and

- (ii) the results of the things having been done.

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).

135 Supervisory intervention orders—amendment and revocation

A court with power to make a supervisory intervention order may amend or revoke a supervisory intervention order if—

- (a) an application for amendment or revocation is made by—
- (i) a competent authority; or
 - (ii) the person in relation to whom the order is made; and
- (b) the court is satisfied that there has been a change of circumstances that justifies the amendment or revocation.

136 Offence—fail to comply with supervisory intervention order

A person commits an offence if—

- (a) a supervisory intervention order is in force in relation to the person; and
- (b) the person fails to comply with the order.

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

Division 3.8.5 Exclusion orders

137 Exclusion orders

- (1) This section applies if—
 - (a) a court convicts a person, or finds a person guilty, of an offence against this Act; and
 - (b) the prosecutor or a competent authority applies for an order under this section; and
 - (c) the court considers the person to be a systematic or persistent offender against this Act; and
 - (d) the court considers that it is necessary to make an order under this section to restrict opportunities for the person to commit, or be involved in the commission of, further offences against this Act.

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 court may make an order (an *exclusion order*) prohibiting the person, for a stated period, from involvement in the transport of dangerous goods or in any part of the transport of dangerous goods.
- (3) However, the court may make an exclusion order only if satisfied that the person should not continue the things the subject of the proposed order and that a supervisory intervention order is not appropriate, having regard to—
 - (a) the offences against this Act of which the person has been previously convicted or found guilty; and
 - (b) the offences against this Act for which the person has been proceeded against by way of infringement notices that have not been withdrawn; and

- (c) any other offences or matters that the court considers to be relevant to the conduct of the person in relation to involvement in the transport of dangerous goods.
- (4) Also, the court may not make an exclusion order that prohibits the person from driving or registering a vehicle.
- (5) For this section, if a person has committed at least 1 offence against this Act, the court may treat an offence that the person has committed against a corresponding law as if the offence had also been committed against this Act.

138 Exclusion orders—amendment and revocation

A court with power to make an exclusion order may amend or revoke an exclusion order if—

- (a) an application for amendment or revocation is made by—
 - (i) a competent authority; or
 - (ii) the person in relation to whom the order is made; and
- (b) the court is satisfied that there has been a change of circumstances that justifies the amendment or revocation.

139 Offence—fail to comply with exclusion order

A person commits an offence if—

- (a) an exclusion order is in force in relation to the person; and
- (b) the person fails to comply with the order.

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

Division 3.8.6 Forfeiture orders

140 Forfeiture

- (1) This section applies if—
- (a) a court convicts a person, or finds a person guilty, of an offence against this Act in relation to dangerous goods; and
 - (b) the prosecutor or a competent authority applies for an order under this section; and
 - (c) the court is satisfied that the person owns the goods or that the owner cannot be identified.

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 court may, in addition to imposing any other penalty, order that the dangerous goods and their packaging be forfeited to the Territory.
- (3) Dangerous goods and packaging forfeited to the Territory may be collected, packaged, transported, sold, destroyed or otherwise disposed of as the competent authority directs.
- (4) The person convicted, or found guilty, of the offence must pay to the Territory the reasonable costs of collecting, packaging, transporting, storing, selling, destroying or otherwise disposing of the dangerous goods and packaging.

Part 3.9 Compensation orders

Division 3.9.1 Definitions—pt 3.9

141 Definitions—pt 3.9

In this part:

compensation order means an order made under this part.

offender—see section 142.

roads compensation order—see section 142.

Division 3.9.2 Roads compensation orders for damage to road infrastructure

142 Roads compensation orders—making

- (1) This section applies if a court convicts a person (the *offender*), or finds a person guilty (also the *offender*), of an offence against this Act.

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 court may make an order (a *roads compensation order*) requiring the offender to pay to the Territory the amount of compensation that the court considers appropriate for damage to road infrastructure that the Territory has suffered, or is likely to suffer, because of the offence.
- (3) A roads compensation order may only be made in favour of the Territory.
- (4) The court may make a roads compensation order if satisfied on the balance of probabilities that the commission of the offence caused or contributed to the damage suffered or likely to be suffered.

143 Roads compensation orders—application

- (1) A roads compensation order may be made on the application of the prosecutor or a competent authority.
- (2) The application may only be made—
 - (a) when the court convicts the offender, or finds the offender guilty, of the offence; or
 - (b) before the end of the period within which a prosecution for the offence could have been started.

144 Roads compensation orders—assessment

- (1) In making a roads compensation order, the court may assess the amount of compensation in the way the court considers appropriate.

Example

the estimated cost of remedying the damage

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) In assessing the amount of compensation, the court may take into account the matters the court considers relevant, including—
 - (a) evidence presented in relation to the prosecution of the offence; and
 - (b) evidence not presented in relation to the prosecution of the offence but presented in relation to the making of the proposed order; and
 - (c) a certificate from the Territory stating that it maintains the road infrastructure concerned; and

(d) any other certificate of the Territory.

Examples—par (d)

- 1 a certificate estimating the cost of remedying the damage
- 2 a certificate estimating the extent of the offender's contribution to the damage

145 Roads compensation orders—certificates

- (1) If the Territory proposes to use a certificate mentioned in section 144 in a proceeding, the Territory must give a copy of the certificate to the offender at least 28 working days before the day on which the matter is set down for hearing.
- (2) The certificate cannot be used in the proceeding unless a copy of the certificate has been given in accordance with this section.
- (3) An offender who wishes to challenge a statement in the certificate must give a notice in writing to the Territory at least 14 working days before the day on which the matter is set down for hearing.
- (4) The notice must state the matters in the certificate that the offender intends to challenge.
- (5) If the offender is intending to challenge the accuracy of a measurement, analysis or reading in the certificate, the offender must state—
 - (a) the reason why the offender alleges the measurement, analysis or reading is inaccurate; and
 - (b) the measurement, analysis or reading that the offender considers to be correct.
- (6) The offender cannot challenge a matter in the certificate if the requirements of this section have not been complied with in relation to the certificate, unless the court gives leave to do so in the interests of justice.

146 Roads compensation orders—limits on amount

- (1) If, in making a roads compensation order, the court is satisfied that the commission of the offence contributed to the damage but that other factors not connected with the commission of the offence also contributed to the damage, the court must limit the amount of the compensation payable by the offender to the amount the court assesses as being the offender's contribution to the damage.
- (2) The maximum amount of compensation must not be more than the amount of the court's jurisdictional limit in a civil proceeding.
- (3) The court must not include in the roads compensation order any amount for—
 - (a) personal injury or death; or
 - (b) loss of income (whether suffered by the Territory or any other person or organisation); or
 - (c) damage to any property (including a vehicle) that is not part of the road infrastructure.

Division 3.9.3 Costs and recovery

147 Compensation orders—costs

- (1) A court has the same power to award costs in relation to a proceeding for a compensation order as the court has in relation to a civil proceeding.
- (2) The *Court Procedures Rules 2006*, part 2.17 (Costs) applies to costs in relation to a proceeding for a compensation order as if—
 - (a) any necessary changes to the rules were made; and
 - (b) any changes prescribed by regulation were made.

148 Compensation orders—enforcement

A compensation order, and any award of costs, made by a court are enforceable as if they were a judgment of the court in a civil proceeding.

149 Compensation orders—other orders and awards

- (1) A compensation order must not be made if another court or tribunal has awarded compensatory damages or compensation in a civil proceeding for the damage based on the same or similar facts.
- (2) If a court purports to make a compensation order in the circumstances mentioned in subsection (1)—
 - (a) the order is void to the extent that it covers the same matters as those covered by the other award; and
 - (b) any payment made under the order to the extent to which it is void must be repaid by the Territory.
- (3) The making of a compensation order does not prevent another court or tribunal from later awarding damages or compensation in a civil proceeding for the damage based on the same or similar facts, but the other court or tribunal must take the compensation order into account when awarding damages or compensation.

Part 3.10 Exemptions

150 Meaning of *exemption*

In this Act:

exemption means an exemption given under section 151.

151 Exemptions by competent authorities—general

- (1) A person may apply to a competent authority for an exemption from compliance with a provision of a regulation in relation to the transport of stated dangerous goods by road.

Note A regulation may contain provisions about the application.

- (2) A competent authority may, by written notice and on its own initiative or on application under subsection (1), exempt a person from compliance with a provision of a regulation in relation to the transport of stated dangerous goods by road if the competent authority is satisfied on reasonable grounds that—
- (a) it is not reasonably practicable for the person to comply with the provision; and
 - (b) granting the exemption would not—
 - (i) be likely to create a risk of death or injury to a person, or harm to the environment or property, greater than the risk would be if the person was required to comply; and

- (ii) cause unnecessary administrative or enforcement difficulties, particularly in relation to maintaining national uniformity of road transport laws.

Note An exemption may have effect in relation to a class of people. This is because power given under an Act to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters, or to make an instrument that applies differently by reference to stated exceptions or factors (see Legislation Act, s 48).

- (3) An exemption may be conditional.
 - (4) An exemption must include the following:
 - (a) the provision of the regulation from which the person is exempt;
 - (b) the dangerous goods to which the exemption applies;
 - (c) the period when the exemption is in force;
 - (d) any conditions of the exemption;
 - (e) the geographical area in which the exemption applies.
 - (5) The following are notifiable instruments:
 - (a) an exemption given to a class of people;
 - (b) an exemption for longer than 6 months.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (6) To remove any doubt, a representative of a class of people may apply under subsection (1).

152 Offence—fail to comply with exemption condition

A person commits an offence if—

- (a) an exemption applies in relation to the person; and
- (b) the exemption is conditional; and

(c) the person fails to comply with a condition of the exemption.

Maximum penalty: 100 penalty units.

153 Offence—fail to keep copy of notice in premises or vehicle

A person commits an offence if—

- (a) the person is given a notice about an exemption; and
- (b) the exemption applies in relation to premises or a vehicle; and
- (c) the person fails to keep a copy of the notice in the premises or vehicle.

Maximum penalty: 100 penalty units.

154 Exemption—competent authority to tell other competent authorities

- (1) This section applies if a competent authority—
 - (a) gives an exemption to a class of people; or
 - (b) gives an exemption for longer than 6 months.
- (2) The competent authority must tell the competent authority of a State the details of the exemption.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

155 Amendment and cancellation of exemptions and conditions

- (1) A competent authority that gives an exemption may cancel the exemption if the authority—
 - (a) is satisfied on reasonable grounds that a condition of the exemption has not been complied with; or
 - (b) is no longer satisfied on reasonable grounds about a matter mentioned in section 151 (2).

- (2) The competent authority may also—
 - (a) amend or cancel a condition of the exemption; or
 - (b) put a new condition on the exemption.
- (3) An exemption given to a person may only be amended or cancelled by written notice given to the person.
- (4) The amendment or cancellation takes effect when it is given to the person or, if a later day is stated in the notice, on the stated day.
- (5) An exemption given to a class of people may only be amended or cancelled by written notice.
- (6) A notice mentioned in subsection (5) is a notifiable instrument.

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

156 Declaration by Minister—amend or suspend regulation’s operation

- (1) The Minister may declare that the operation of a regulation, or a stated part of a regulation—
 - (a) is suspended for a stated period; or
 - (b) is amended in the way stated by the Minister.
- (2) A declaration is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Note 2 A declaration may have effect in relation to all of the ACT or a stated area of the ACT. This is because power given under an Act to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters, or to make an instrument that applies differently by reference to stated exceptions or factors (see Legislation Act, s 48).

Part 3.11 General liability and evidentiary provisions

Division 3.11.1 Liability for offences

157 Criminal liability of executive officers of corporations

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits an offence (a *relevant offence*) by contravening a provision of this Act; and

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).

- (b) the officer was reckless about whether the contravention would happen; and
- (c) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
- (d) the officer failed to take reasonable steps to prevent the contravention.

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

- (2) 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 contravention):
 - (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 an assessment under subparagraph (i);
 - (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 could be, about to happen.
- (3) Subsection (2) does not limit the matters to which the court may have regard.
- (4) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.
- (6) In this section:

executive officer, of a corporation, means a person, however described and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

158 Offence—partners etc taken to have committed offences of other partners

- (1) If a person (the *offender*) who is a partner in a partnership commits an offence against this Act in the course of the activities of the partnership, each other partner in the partnership, and each other person who is involved with, or takes part in, the management of the partnership, is taken to have committed the offence and is punishable accordingly.

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) Subsection (1) does not apply to a person if—
- (a) the person was not in a position to influence the conduct of the offender; or
 - (b) the person, being in a position to influence the conduct of the offender, took reasonable precautions and exercised due diligence to prevent the commission of the offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- (3) This section does not affect the liability of the offender.
- (4) This section applies whether or not the offender is prosecuted for, or convicted of, the offence.

159 Offence—managers etc of unincorporated associations taken to have committed offences of other managers etc

- (1) If a person (the *offender*) who is involved in the management of an unincorporated association commits an offence against this Act in the course of the activities of the unincorporated association, each other person who is involved with, or takes part in, the management of the unincorporated association is taken to have committed the offence and is punishable accordingly.

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) Subsection (1) does not apply to a person if—
- (a) the person was not in a position to influence the conduct of the offender; or
 - (b) the person, being in a position to influence the conduct of the offender, took reasonable precautions and exercised due diligence to prevent the commission of the offence.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- (3) This section does not affect the liability of the offender.
- (4) This section applies whether or not the offender is prosecuted for, or convicted of, the offence.

Division 3.11.2 General exceptions to offences

160 Exception for owners and operators

- (1) This section applies to a defendant for an offence against this Act if the defendant is being prosecuted as an owner or operator of a vehicle transporting dangerous goods.

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 defendant does not commit the offence if, at the time of the conduct that would, apart from this section, make up the offence, the vehicle was being used by—
 - (a) someone else not entitled (whether by express or implied authority or otherwise) to use the vehicle, other than an employee or agent of the defendant; or
 - (b) an employee of the defendant who was acting at the relevant time outside the scope of the employment; or
 - (c) an agent (in any capacity) of the defendant who was acting at the relevant time outside the scope of the agency.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see Criminal Code, s 58).

- (3) However, if the offence relates to a breach of this Act for an alleged deficiency concerning the vehicle or dangerous goods, the exception in subsection (2) is only available to the defendant if—
- (a) the vehicle or dangerous goods had not, before it or they stopped being under the defendant's control, been driven or transported in Australia in breach of this Act or a corresponding law that relates to any of the alleged deficiencies; and
 - (b) 1 or more material changes, resulting in the alleged breach, were made after the vehicle or dangerous goods stopped being under the defendant's control.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

- (4) In this section:

deficiency concerning a vehicle or dangerous goods means a deficiency in anything that is required by regulation—

- (a) to be carried in a vehicle; or
- (b) to be met in relation to dangerous goods.

161 Exception if complying with direction

A person does not commit an offence against this Act if the conduct making up the offence was done in compliance with a direction (whether or not a lawful direction) given by an authorised person.

Note The defendant has an evidential burden in relation to the matters mentioned in this section (see Criminal Code, s 58).

Division 3.11.3 General evidentiary provisions

162 Acts and omissions of representatives

- (1) In this section:

person means an individual.

Note See the Criminal Code, pt 2.5 for provisions about corporate criminal responsibility.

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 an offence against this Act.

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).

- (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 a representative of the person 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).

163 Evidence—certificate signed by authorised person

- (1) This section applies in relation to a proceeding for an offence against this Act.

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) A certificate that appears to be signed by an authorised person, and that states any of the following matters, is evidence of the matters:
 - (a) that dangerous goods described in transport documents carried in a vehicle are being carried in the vehicle;
 - (b) that particular goods are dangerous goods or dangerous goods of a particular kind;
 - (c) if markings or placards on or attached to a substance or packaging indicate that the substance is, or the packaging contains, particular dangerous goods—that the substance is, or the packaging contains, the dangerous goods;
 - (d) if markings on, or attached to, a package indicates that the package contains particular dangerous goods—that the package contains the dangerous goods;
 - (e) if markings or placards on or attached to a vehicle or equipment indicate that the vehicle or equipment is being used to transport dangerous goods—that the vehicle or equipment is being used to transport the dangerous goods;

- (f) if markings or placards on or attached to a substance or packaging indicate, in relation to the substance, the packaging or the contents of the packaging, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture—that the substance, packaging or contents of the packaging has the capacity, tare weight, origin, character, specification, ownership or date of manufacture;
 - (g) if markings on, or attached to, a package indicates, in relation to the contents of the package, a particular capacity, tare weight, origin, character, specification, ownership or date of manufacture—that the contents of the package has the capacity, tare weight, origin, character, specification, ownership or date of manufacture;
 - (h) if markings or placards on or attached to a vehicle or packaging indicate, in relation to the load of the vehicle or the contents of the packaging, a particular quantity of dangerous goods—that the vehicle or packaging contained the quantity of dangerous goods;
 - (i) that a person was not, at a particular time, accredited or the holder of a licence relating to dangerous goods.
- (3) A certificate mentioned in subsection (2) may state anything by reference to a date or period.

164 Evidence—certain documents signed by competent authority

- (1) This section applies in relation to a proceeding for an offence against this Act.

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) A relevant document that appears to be signed by a competent authority is evidence of the matters stated in it.

(3) In this section:

relevant document means any of the following documents:

- (a) a document about whether a person is exempt from certain requirements under section 151 (Exemptions by competent authorities—general);
- (b) a document relating to vehicles, equipment or other items required by regulation to be approved by the competent authority;
- (c) a document relating to accreditation or licensing by the competent authority.

165 Evidence—mass of vehicle or packaging

- (1) This section applies to a record made by—
 - (a) the operator of a weighbridge or weighing facility; or
 - (b) an employee of the operator of the weighbridge or weighing facility.
- (2) Evidence of a record made by a person mentioned in subsection (1) of the mass of a vehicle transporting dangerous goods or packaging containing dangerous goods weighed at the weighbridge or weighing facility is admissible in a proceeding under this Act and is evidence of the mass of the vehicle or packaging at the time it was weighed.

166 Proof of appointments unnecessary

For this Act, it is not necessary to prove the appointment of an authorised person.

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).

167 Evidence—transport documentation

- (1) Transport documentation is admissible in a proceeding under this Act and is evidence of—
 - (a) the identity and status of the parties to the transaction to which the documentation relates; and
 - (b) the destination or intended destination of the load to which the documentation relates.

- (2) In this section:

status, of a party to a transaction, includes the party's status in relation to the party's involvement in the transport of dangerous goods.

168 Use of codes of practice etc in proceedings

- (1) This section applies if—
 - (a) it is alleged in a criminal proceeding against a person that the person contravened a provision of this Act; and
 - 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).
 - (b) a relevant document states a way to comply with the provision or a requirement of the provision; and
 - (c) either—
 - (i) the relevant document is on the ACT legislation register; or
 - (ii) copies of the relevant document are readily available for purchase or inspection in the ACT.
- (2) The relevant document is admissible in the proceeding.

(3) Also, the person is taken to have complied with the provision or requirement if the court is satisfied that, at the relevant time, the person acted in accordance with the relevant document.

(4) In this section:

ACT legislation register—see the Legislation Act, section 18.

relevant document means a code of practice, guideline or other document approved by the Australian Transport Council to give practical guidance to people involved in the transport of dangerous goods.

Chapter 4 Notification and review of decisions

169 Definitions—ch 4

In this chapter:

decision-maker means an authorised person or a competent authority.

internally reviewable decision means a decision prescribed by regulation.

internal reviewer—see section 173.

reviewable decision means—

- (a) an internal reviewer's decision in relation to an internally reviewable decision; or
- (b) a decision-maker's decision (other than an internally reviewable decision) prescribed by regulation.

170 Internal review notices

If a decision-maker makes an internally reviewable decision, the decision-maker must give an internal review notice to each entity prescribed by regulation in relation to the decision.

Note 1 **Internal review notice**—see the *ACT Civil and Administrative Tribunal Act 2008*, s 67B (1).

Note 2 The decision-maker must also take reasonable steps to give an internal review notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67B).

Note 3 The requirements for internal review notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

171 Applications for internal review

- (1) The following may apply to a competent authority for review of an internally reviewable decision made by the authority or an authorised person appointed by the authority:
 - (a) if an entity is prescribed by regulation in relation to the decision—the entity;
 - (b) any other person whose interests are affected by the decision.
- (2) The following may apply to the chief police officer for review of an internally reviewable decision made by a police officer:
 - (a) if an entity is prescribed by regulation in relation to the decision—the entity;
 - (b) any other person whose interests are affected by the decision.
- (3) The application must—
 - (a) be in writing; and
 - (b) state the applicant's name and address; and
 - (c) set out the applicant's reasons for making the application.

Note If a form is approved under s 195 for the application, the form must be used.
- (4) The application must be given to the competent authority or chief police officer within—
 - (a) 28 days after the day the applicant is given the internal review notice; or
 - (b) any longer period allowed by the authority or chief police officer before or after the end of the 28-day period.

172 Applications not stay internally reviewable decisions

The making of an application for review of an internally reviewable decision does not affect the operation of the decision.

173 Internal reviewer

The competent authority or chief police officer must arrange for a person who did not make the internally reviewable decision (the *internal reviewer*) to review the decision.

174 Review by internal reviewer

- (1) The internal reviewer for an internally reviewable decision must review the decision within 28 days (the *28-day period*) after the day the decision-maker receives the application for review of the internally reviewable decision.
- (2) The internal reviewer must—
 - (a) confirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and substitute the reviewer's own decision.
- (3) If the decision is not varied or set aside within the 28-day period, the decision is taken to have been confirmed by the internal reviewer.

175 Reviewable decision notices

If an internal reviewer or decision-maker makes a reviewable decision, the reviewer or decision-maker must give a reviewable decision notice to each entity prescribed by regulation in relation to the decision.

Note 1 The internal reviewer or decision-maker must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

176 Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) for an internal reviewer's decision in relation to an internally reviewable decision—an entity to whom an internal review notice is required to be given in relation to the decision;
- (b) an entity prescribed by regulation in relation to the decision;
- (c) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Chapter 5 Miscellaneous

Part 5.1 Secrecy and information sharing

177 Definitions—pt 5.1

In this part:

divulge includes communicate.

protected information means information about a person that is disclosed to, or obtained by, a relevant person because of the exercise of a function under this Act by the person or someone else.

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).

relevant person means a person who—

- (a) is or has been—
 - (i) a delegate of a competent authority; or
 - (ii) a person employed by, or engaged to provide services to or on behalf of, a competent authority; or
 - (iii) a person employed by, or engaged to provide services to, a person or body engaged to provide services to a competent authority; or
- (b) exercises, or has exercised, a function under this Act.

178 Secrecy

- (1) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

formal warning—see section 116 (2).

information sharing guidelines—see section 179.

produce includes allow access to.

- (2) A relevant person commits an offence if—
- (a) the person—
 - (i) makes a record of protected information about someone else; and
 - (ii) is reckless about whether the information is protected information about someone else; or
 - (b) the person—
 - (i) does something that divulges protected information about someone else; and
 - (ii) is reckless about whether—
 - (A) the information is protected information about someone else; and
 - (B) doing the thing would result in the information being divulged to someone else.

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

- (3) Subsection (2) does not apply to the divulging of protected information about someone with the person's consent.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see Criminal Code, s 58).

- (4) Subsection (2) does not apply if the record is made, or the information is divulged—
- (a) under this Act or another law in force in the ACT; or

- (b) in relation to the exercise of a function, as a relevant person, under this Act or another law in force in the ACT; or
- (c) in relation to the administration of this Act; or
- (d) to a competent authority, a corresponding competent authority or an authorised person; or
- (e) to a police officer or a member (however described) of the police force or police service of another jurisdiction; or
- (f) to a public authority of any jurisdiction prescribed by regulation; or
- (g) to a public authority of any jurisdiction for law enforcement purposes; or
- (h) to a court or in relation to any legal proceeding; or
- (i) in accordance with the information sharing guidelines.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see Criminal Code, s 58).

- (5) A relevant person need not divulge 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 law in force in the ACT.
- (6) This section does not prevent information from being used—
 - (a) to assist a person in deciding whether to withdraw a formal warning for any offence; or
 - (b) to allow a competent authority to accumulate aggregated data and to allow the authority to authorise use of the aggregated data for research or education.

179 Information sharing guidelines

- (1) The Minister may make guidelines (*information sharing guidelines*) about—
 - (a) making records of protected information; and
 - (b) divulging protected information.
- (2) A guideline is a disallowable instrument.

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

180 Offence—information not to be used for other purposes

A person commits an offence if—

- (a) the person—
 - (i) makes a record of protected information about someone else; or
 - (ii) divulges protected information about someone else; and
- (b) the record is made, or information divulged, in accordance with an exception under section 178 (Secrecy); and
- (c) the record is made, or information divulged, for a particular purpose; and
- (d) the person uses the record or information for another purpose.

Maximum penalty: 100 penalty units.

181 Competent authority may give seized records etc to public authorities

- (1) This section applies if a record, device or other thing is seized, or information is obtained, under the following:
 - division 3.2.3 (Other powers in relation to pt 3.2 vehicles);
 - part 3.3 (Directions to give name, records and other things);

- part 3.5 (Enforcement).
- (2) A competent authority may, for law enforcement purposes, give the record, device, thing or information to a public authority (including a public authority of another jurisdiction).

Part 5.2 Indemnities

182 Protection from liability

- (1) An official is not civilly liable for conduct engaged in honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from this section, attach to the official attaches instead to the Territory.
- (3) In this section:

conduct means an act or omission to do an act.

official means—

- (a) an authorised person; or
- (b) a person authorised under this Act by an authorised person to do or not to do a thing.

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).

183 Indemnity not affected by certain matters

- (1) An indemnity under this part is not affected only because a vehicle was in fact not carrying dangerous goods or goods too dangerous to be transported.
- (2) An indemnity under this part is not affected only because goods were not in fact dangerous goods or goods too dangerous to be transported.

184 Other indemnities not affected

This part does not affect any other indemnity under another law, if the other indemnity is not inconsistent with an indemnity under this part.

Part 5.3 Victimisation of people for reporting breaches and assisting with investigations

185 Definitions—pt 5.3

In this part:

contractor means an individual who works under a contract for services.

employee includes contractor.

Note *Employee*—see the dictionary.

employment order—see section 189.

public agency means—

- (a) a competent authority or a corresponding authority; or
- (b) an authorised person or authorised person (however described) appointed under a corresponding law; or
- (c) a police officer or member (however described) of the police force or police service of another jurisdiction.

186 Offence—victimisation of employees for reporting breaches or assisting with investigations

- (1) A person commits an offence if—
 - (a) the person is an employer of another person (the *employee*); and
 - (b) the person—
 - (i) dismisses the employee; or
 - (ii) injures the employee during the employment; or

- (iii) alters an employee's position to the employee's detriment; and
- (c) the person acts under paragraph (b) because the employee—
 - (i) complained about a breach, or alleged breach, of this Act or a corresponding law to—
 - (A) the employer; or
 - (B) another employee; or
 - (C) a trade union; or
 - (D) a public agency; or
 - (ii) assisted or gave information to a public agency in relation to a breach, or alleged breach, of this Act or a corresponding law.

Maximum penalty: 100 penalty units.

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) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant acted for a reason other than a reason mentioned in subsection (1) (c).

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see Criminal Code, s 59).

187 Offence—victimisation of prospective employees for reporting breaches or assisting with investigations

- (1) A person commits an offence if—
- (a) the person is an employer, or prospective employer, of another person (the *prospective employee*); and
 - (b) the person—
 - (i) refuses or deliberately omits to offer employment to the prospective employee; or
 - (ii) treats the prospective employee less favourably than another prospective employee would be treated in relation to the terms on which employment is offered; and
 - (c) the person acts under paragraph (b) because the prospective employee—
 - (i) complained about a breach, or alleged breach, of this Act or a corresponding law to—
 - (A) a former employer; or
 - (B) another employee of a former employer; or
 - (C) a trade union; or
 - (D) a public agency; or
 - (ii) assisted or gave information to a public agency in relation to a breach, or alleged breach, of this Act or a corresponding law.

Maximum penalty: 100 penalty units.

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) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant acted for a reason other than a reason mentioned in subsection (1) (c).

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see Criminal Code, s 59).

188 Victimisation offences—order for compensation

- (1) This section applies if a person is convicted or found guilty of an offence against section 186 (Offence—victimisation of employees for reporting breaches or assisting with investigations) or section 187 (Offence—victimisation of prospective employees for reporting breaches or assisting with investigations).
- (2) The court may, in addition to imposing a penalty on the person, make an order that the person pay, within a stated period to the employee, or prospective employee, the damages that the court considers appropriate for compensation.
- (3) The maximum amount of damages must not be more than the amount of the court's jurisdictional limit in a civil proceeding.
- (4) An order for payment of damages is enforceable as if the order were a judgment of the court in a civil proceeding.
- (5) To remove any doubt, the court may also make an employment order in relation to the employee or prospective employee.

189 Victimisation offences—order for re-employment etc

- (1) This section applies if a person is convicted or found guilty of an offence against section 186 (Offence—victimisation of employees for reporting breaches or assisting with investigations) or section 187 (Offence—victimisation of prospective employees for reporting breaches or assisting with investigations).

- (2) The court may, in addition to imposing a penalty on the person, make an order (an *employment order*) that—
- (a) the employee be reinstated or re-employed in the employee's former position or, if the position is not available, in a similar position; or
 - (b) the prospective employee be employed in the position for which the prospective employee had applied or, if the position is not available, in a similar position.

190 Offence—fail to comply with employment order

A person commits an offence if—

- (a) an employment order is made against the person; and
- (b) the person fails to comply with the order.

Maximum penalty: 100 penalty units.

Part 5.4 Other miscellaneous provisions

191 Contracting out prohibited

A term of a contract or agreement that purports to exclude, limit or modify the operation of this Act is void to the extent that it would otherwise have that effect.

Note 1 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 2 A reference to an Act includes a reference to a provision of the Act (see Legislation Act, s 7 (3)).

192 Assistance in emergencies or accidents

- (1) A helper does not incur personal civil liability for an act done or omission made honestly and without recklessness in assisting, or attempting to assist, in a situation in which an emergency or accident involving dangerous goods happens or is likely to happen.
- (2) Subsection (1) does not apply to a person whose act or omission caused or partly caused the situation.
- (3) Subsection (1) applies to a public authority even if the authority requires payment for a service provided in connection with the situation.
- (4) This section does not apply to an authorised person.
- (5) In this section:

helper means a person who acts without expectation of payment or other consideration.

193 Delegation by Minister—limitation

The Minister must not delegate the Ministers functions under the following sections:

- section 20 (1) (Competent authorities);
- section 156 (Declaration by Minister—amend or suspend regulation’s operation).

Note 1 The Legislation Act, s 254A provides that a Minister may delegate the Minister’s functions under an Act or statutory instrument to anyone else.

Note 2 For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

194 Determination of fees

- (1) The Minister may 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.

195 Approved forms

- (1) The Minister may 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.

Part 5.5 Regulations

196 Regulation-making power

- (1) The Executive may make regulations for this Act.

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

- (2) A regulation may create offences and fix maximum penalties of not more than 40 penalty units for the offences.

197 Regulations—certain specific matters

A regulation may deal with the following:

- (a) identifying and classifying goods as dangerous goods;
- (b) identifying and classifying dangerous goods;
- (c) identifying, classifying and regulating goods that are too dangerous to be transported (including prohibiting the transport of the goods);
- (d) the analysis and testing of dangerous goods;
- (e) the loading of dangerous goods for, and the unloading of dangerous goods after, transport;
- (f) procedures for the transport of dangerous goods, including—
 - (i) the quantities and circumstances in which dangerous goods are to be transported; and
 - (ii) safety procedures and equipment;
- (g) obligations arising, and procedures to be followed, in the event of a dangerous situation in relation to the transport of dangerous goods;

- (h) the licensing of the following:
 - (i) vehicles used in the transport of dangerous goods;
 - (ii) drivers of vehicles used in the transport of dangerous goods;
 - (iii) other people involved in the transport of dangerous goods;
- (i) documents required to be prepared or kept by people involved in the transport of dangerous goods, and the approval by a competent authority of alternative documentation;
- (j) registers of approvals, exemptions and determinations.

198 Regulations—things used in the transport of dangerous goods

A regulation may also deal with the following:

- (a) the marking and labelling of packages containing dangerous goods for transport, and the placarding of vehicles and packaging on or in which dangerous goods are transported;
- (b) containers, vehicles, packaging, equipment and other things used in the transport of dangerous goods;
- (c) the manufacture of containers, vehicles, packaging, equipment and other things for use in the transport of dangerous goods.

199 Regulations—competent and corresponding authorities etc

A regulation may also deal with the following:

- (a) the making of determinations by a competent authority in relation to the following:
 - (i) identifying and classifying goods as dangerous goods;
 - (ii) identifying and classifying dangerous goods;

- (iii) what is, and what is not, compatible with dangerous goods for transport purposes;
- (iv) prohibiting or regulating the transport of dangerous goods by road;
- (v) regulating the containment of dangerous goods that are being, or that are to be, transported by road;
- (vi) routes along which, the areas where and the times when dangerous goods may, must or must not be transported;
- (b) the approval by a competent authority of—
 - (i) vehicles, packaging, equipment and other things used in relation to the transport of dangerous goods; and
 - (ii) facilities for, and methods of, testing or using vehicles, packaging, equipment and other things used in relation to the transport of dangerous goods; and
 - (iii) processes carried out in relation to the transport of dangerous goods;
- (c) applications for, and consideration of applications for, exemptions;
- (d) the recognition of laws of other jurisdictions relating to the transport of dangerous goods and of things done under the laws, and the giving effect to the things;
- (e) the recognition of a body, consisting of a competent authority and corresponding authorities, to make decisions, and provide oversight on decisions made, under this Act for the purposes of national uniformity, and other matters in relation to the body, including the recognition of decisions made by the body;

- (f) the passing of information on people relevant to licensing or compliance and enforcement matters to corresponding authorities and other authorities involved in the enforcement of road laws.

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).

200 Regulations—accreditation and training etc

A regulation may also deal with the following:

- (a) voluntary accreditation schemes, including privileges to be given or penalties to be imposed under the schemes, and the cancellation or suspension of the schemes;
- (b) the mandatory accreditation of people involved in the transport of dangerous goods;
- (c) the training and qualifications required of authorised people and other people exercising functions under this Act;
- (d) the training and qualifications required of people involved in, and the approval of training courses and qualifications relating to involvement in, the transport of dangerous goods;
- (e) the recognition of accredited providers of training, package testing, design verification and other similar activities;
- (f) requiring people involved in the transport of dangerous goods to hold insurance, or some other form of indemnity, in relation to the transport.

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).

201 Regulations—stated entities

A regulation may also—

- (a) require a matter affected by the regulation to be approved by or to the satisfaction of a stated entity; or
- (b) give a discretion to, or impose a duty on, a stated entity.

202 Regulations—application etc of laws of other jurisdictions and instruments

- (1) A regulation may apply, adopt or incorporate a law of another jurisdiction or an instrument, or a provision of a law of another jurisdiction or instrument, as in force at a particular time or from time to time.

Examples—instruments

- 1 a code, standard or rule about dangerous goods
- 2 a code, standard or rule about the transport of dangerous goods

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) In this section:

law of another jurisdiction—see the Legislation Act, section 47 (10).

Part 5.6 Repeals and consequential amendments

203 Legislation repealed

The following legislative instruments under the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth) are repealed:

- *Road Transport Reform (Dangerous Goods) Appointment of Authorised Officers 2007* (NI2007-434)
- *Road Transport Reform (Dangerous Goods) Appointment of Competent Authority 2007* (NI2007-408)
- *Road Transport Reform (Dangerous Goods) Notification of Adoption of Code 2004* (NI 2004-356).

204 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

Chapter 10 Transitional

500 Definitions—ch 10

In this chapter:

commencement day means the day this Act, section 6 (Purpose of Act) commences.

repealed Act means the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth) (repealed).

501 Transitional—offences

- (1) This section applies if—
 - (a) apart from subsection (2), a person commits an offence against this Act; and
 - (b) the offence is committed not later than 1 year after the commencement day.
- (2) If the offence would not have been an offence against the repealed Act, the person does not commit an offence against this Act.

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).

502 Transitional—notice to remedy contravention

A notice mentioned in the repealed Act, section 28 (Notice to remedy contravention) that is in force under the repealed Act immediately before the commencement day is taken to be an improvement notice under this Act.

503 Transitional—notice to eliminate or minimise danger

A notice mentioned in the repealed Act, section 29 (Notice to eliminate or minimise danger) that is in force under the repealed Act immediately before the commencement day is taken to be a prohibition notice under this Act.

504 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

505 Transitional effect—Legislation Act, s 88

This chapter (other than section 504) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

506 Expiry—ch 10

This chapter expires 2 years after the day this section commences.

Schedule 1 Consequential amendments

(see s 204)

Part 1.1 Dangerous Substances Act 2004

[1.1] Section 8 (1), note 2

substitute

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

- *Dangerous Goods (Road Transport) Act 2009*
- *Emergencies Act 2004*
- *Environment Protection Act 1997*
- *Medicines, Poisons and Therapeutic Goods Act 2008*
- *Work Safety Act 2008*.

[1.2] Section 8 (1), notes 4 and 5

substitute

Note 4 See the *Dangerous Goods (Road Transport) Act 2009* for the transport by road of certain dangerous substances that are classified as dangerous goods under that Act.

[1.3] Section 82 (1), notes 2 and 3

substitute

Note 2 See the *Dangerous Goods (Road Transport) Act 2009* for the transport by road of certain dangerous substances that are classified as dangerous goods under that Act.

Part 1.2 Dangerous Substances (General) Regulation 2004

[1.4] Section 202, note

substitute

Note See the *Dangerous Goods (Road Transport) Act 2009* for the transport by road of certain dangerous substances that are classified as dangerous goods under that Act.

[1.5] Part 3.2, note 2

substitute

Note 2 The transport of asbestos and asbestos products is regulated by the *Dangerous Goods (Road Transport) Act 2009*.

Part 1.3 Road Transport (Safety and Traffic Management) Regulation 2000

[1.6] Section 18

substitute

18 ARR r 216 (3)—towing a vehicle at night or in hazardous weather conditions

For the Australian Road Rules, rule 216 (3):

dangerous goods—see the *Dangerous Goods (Road Transport) Act 2009*, dictionary.

placard load—see the *Dangerous Goods (Road Transport) Act 2009*, dictionary.

[1.7] Section 59

omit

Part 1.4 **Road Transport (Vehicle Registration) Regulation 2000**

[1.8] Dictionary, definition of *road tank vehicle* and note

substitute

road tank vehicle has the same meaning as in the 7th edition of the *Australian Code for the Transport of Dangerous Goods by Road and Rail* published by the Commonwealth.

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:

- Corporations Act
- exercise (a function)
- external territory
- function
- infringement notice
- internal territory
- public employee
- State
- the Territory
- working day.

action, for division 3.6.2 (Formal warnings)—see section 115.

another jurisdiction means the Commonwealth, a State, an external territory or internal territory (other than the Territory).

appointing competent authority—see section 23 (2).

associate, for part 3.8 (General court-based penalties)—see section 127.

at premises, for part 3.5 (Enforcement)—see section 68.

Australian Road Rules—see the *Road Transport (Safety and Traffic Management) Regulation 2000*, section 5.

authorised, to drive a vehicle or run its engine—see section 17.

authorised person—see section 23 (1).

broken-down vehicle or trailer—see section 19.

combination means a vehicle consisting of a motor vehicle and 1 or more trailers.

commercial benefits penalty order—see section 129 (1).

compensation order, for part 3.9 (Compensation orders)—see section 141.

competent authority means a competent authority declared under section 20.

compliance purposes—see section 9.

connected, with an offence, for part 3.5 (Enforcement)—see section 68.

consignor—see section 10.

consigns—see section 10.

contractor, for part 5.3 (Victimisation of people for reporting breaches and assisting with investigations)—see section 185.

corresponding authority means a competent authority under a corresponding law.

corresponding law means—

- (a) a law of another jurisdiction corresponding, or substantially corresponding, to this Act; or
- (b) a law of another jurisdiction that is declared by regulation to be a corresponding law.

dangerous activity, for part 3.7 (Prohibition notices)—see section 118.

dangerous goods means—

- (a) a substance or article prescribed by regulation as dangerous goods; or
- (b) a substance or article determined by a competent authority in accordance with a regulation to be dangerous goods.

dangerous situation means a situation that is causing or likely to cause imminent risk of death or serious injury to a person, significant harm to the environment or significant damage to property.

decision-maker, for chapter 4 (Notification and review of decisions)—see section 169.

divulge, for part 5.1 (Secrecy and information sharing)—see section 177.

driver of a vehicle includes—

- (a) a two-up driver of the vehicle who is present in or near the vehicle; and
- (b) a person who is driving the vehicle as a driver under instruction or under an appropriate learner licence or learner permit; and
- (c) if the vehicle is a trailer—the driver of the vehicle towing the trailer.

driver licence means a licence (including a probationary and conditional licence) issued under a law of the ACT or a State authorising the licensee to drive a vehicle, but does not include—

- (a) a licence issued under this Act; or
- (b) a provisional or learner licence.

Note ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1, def *State*).

due date and time, for an improvement notice, for part 3.6 (General administrative penalties)—see section 108.

employee—

- (a) means an individual who works under a contract of employment, apprenticeship or training; and

- (b) for part 5.3 (Victimisation of people for reporting breaches and assisting with investigations)—see section 185.

employer means a person who employs someone else under—

- (a) a contract of employment, apprenticeship or training; or
(b) a contract for services.

exclusion order—see section 137 (2).

exemption—see section 150.

fit, to drive a vehicle or run its engine—see section 16.

formal warning, for division 3.6.2 (Formal warnings)—see section 116 (2).

goods too dangerous to be transported means—

- (a) a substance or article prescribed by regulation as goods too dangerous to be transported; or
(b) a substance or article determined by a competent authority, in accordance with a regulation, to be goods too dangerous to be transported.

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

improvement notice—see section 109.

in a vehicle includes on the vehicle.

intelligent transport system means a system involving the use of electronic or other technology (whether located in a vehicle, or on or near a road, or elsewhere) that has the capacity and capability to monitor, collect, store, display, analyse, transmit or report information relating to—

- (a) a vehicle or its equipment or load, the driver of a vehicle, the operator of a fleet of vehicles or someone else involved in road transport; and

- (b) without limiting paragraph (a), whether a vehicle is being operated in accordance with this Act.

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).

internally reviewable decision, for chapter 4 (Notification and review of decisions)—see section 169.

internal reviewer, for chapter 4 (Notification and review of decisions)—see section 173.

internal review notice—see the *ACT Civil and Administrative Tribunal Act 2008*, section 67B (1).

involvement in the transport of dangerous goods includes—

- (a) importing, or arranging for the importation of, dangerous goods into Australia; and
- (b) packing dangerous goods for transport; and
- (c) marking or labelling packages containing dangerous goods for transport, and placarding vehicles and packaging on or in which dangerous goods are transported; and
- (d) consigning dangerous goods for transport including the preparation of transport documentation; and
- (e) loading dangerous goods for transport or unloading dangerous goods that have been transported; and
- (f) undertaking, or being responsible for, otherwise than as an employee or sub-contractor, the transport of dangerous goods; and
- (g) driving a vehicle carrying dangerous goods by; and
- (h) being the consignee of dangerous goods transported; and

- (i) being involved as a director, secretary or manager of a corporation, or other person who takes part in the management of a corporation, that takes part in an activity covered by this definition.

jurisdiction means the Commonwealth, a State, an external territory or internal territory.

loader, of goods for transport—see section 13.

loads, goods for transport—see section 13.

motor vehicle—see the *Road Transport (General) Act 1999*, dictionary.

occupier, of premises or a vehicle, for part 3.5 (Enforcement)—see section 68.

offence, for part 3.5 (Enforcement)—see section 68.

offender—

- (a) for division 3.6.1 (Improvements notices)—see section 109; and
- (b) for division 3.6.2 (Formal warnings)—see section 116; and
- (c) for part 3.9 (Compensation orders)—see section 142.

operator, of a vehicle—see section 14.

owner, of a vehicle, means a person who—

- (a) is the sole or joint owner or part owner of the vehicle; or
- (b) has possession or use of the vehicle under a credit, hire-purchase, lease or other agreement, other than an agreement requiring the vehicle to be registered in the name of someone else.

package, in relation to goods, is the complete product of the packing of the goods for transport, and consists of the goods and their packaging.

packaging, in relation to goods—see section 11.

packer, of goods for transport—see section 12.

packs, goods for transport—see section 12.

part 3.2 vehicle—see section 38.

placard means a label or emergency information panel that is required by regulation to be used in transporting dangerous goods.

placard load means a load of dangerous goods that must be placarded under a regulation.

premises includes a structure, whether permanent or temporary, and land, but does not include a vehicle.

prime contractor, in relation to the transport of dangerous goods by road, means the person who, in conducting a business for or involving the transport of dangerous goods by road, has undertaken to be responsible for, or is responsible for, the transport of the goods by road.

prohibition notice—see section 119.

protected information, for part 5.1 (Secrecy and information sharing)—see section 177.

public agency, for part 5.3 (Victimisation of people for reporting breaches and assisting with investigations)—see section 185.

public authority means—

- (a) an Australian government in any capacity; or
- (b) a body established under a law, or the holder of an office established under a law, for a public purpose, including a local government authority; or
- (c) a police force or police service.

qualified, to drive a vehicle or run its engine—see section 15.

reciprocal powers agreement—see section 26.

registered operator, of a vehicle, means—

- (a) for a vehicle registered under the *Road Transport (Vehicle Registration) Act 1999*—a person recorded in the registrable vehicles register kept under that Act as a registered operator of the vehicle; or
- (b) for a vehicle registered under the law of another jurisdiction— a person recorded in the register of the other jurisdiction corresponding to the registrable vehicles register as a registered operator (however described) of the vehicle.

relevant person, for part 5.1 (Secrecy and information sharing)— see section 177.

responsible person—

- (a) for this Act generally—for an authorised person, means—
 - (i) for an authorised person other than a police officer—the appointing competent authority; or
 - (ii) for a police officer—a senior police officer; and
- (b) for division 3.5.6 (Dealing with seized things)—see section 96.

reviewable decision, for chapter 4 (Notification and review of decisions)—see section 169.

road—see the Australian Road Rules, rule 12.

road infrastructure—

- (a) includes—
 - (i) a road, or road related area, including its surface or pavement; and
 - (ii) anything under or supporting a road, or road related area, or its surface or pavement and maintained by the Territory or Commonwealth; and

- (iii) any bridge, tunnel, causeway, ford or other work or structure forming part of a road system, or road related area system, or supporting a road or road related area; and
 - (iv) any bridge or other work or structure located above, in or on a road or road related area and maintained by the Territory or Commonwealth; and
 - (v) any traffic control devices, railway or tramway equipment, electricity equipment, emergency telephone systems or any other facilities (whether of the same or a different kind) in, on, over, under or connected with anything mentioned in subparagraphs (i) to (iv); and
 - (vi) anything else prescribed by regulation as road infrastructure; but
- (b) does not include anything prescribed by regulation as not road infrastructure.

road related area—see the Australian Road Rules, rule 13.

roads compensation order, for part 3.9 (Compensation orders)—see section 142.

road transport legislation—see the *Road Transport (General) Act 1999*, section 6.

senior police officer means the chief police officer or another police officer of or above the rank of superintendent.

supervisory intervention order—see section 133 (2).

tank vehicle means a vehicle—

- (a) of which a tank forms part; or
- (b) to which a tank (other than a portable tank) is attached.

trailer—see the *Road Transport (General) Act 1999*, dictionary.

transport, in relation to dangerous goods, includes—

- (a) the packing, loading and unloading of the goods, and the transfer of the goods to or from a vehicle, for the purpose of their transport; and
- (b) the marking or labelling of packages containing dangerous goods, and the placarding of vehicles and packaging on or in which dangerous goods are transported; and
- (c) other matters incidental to their transport.

transport documentation means documentation required by regulation for the transport of dangerous goods.

two-up driver means a person accompanying a driver of a vehicle on a journey or part of a journey, who has been, is or will be sharing the task of driving the vehicle during the journey.

unattended—see section 18.

vehicle—see the *Road Transport (General) Act 1999*, dictionary.

warrant, for part 3.5 (Enforcement)—see section 68.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 27 August 2009.

2 Notification

Notified under the Legislation Act on 28 September 2009.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Dangerous Goods (Road Transport) Bill 2009, which was passed by the Legislative Assembly on 17 September 2009.

Clerk of the Legislative Assembly

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