2004

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

DANGEROUS SUBSTANCES (GENERAL) REGULATION 2004

SL2004-56

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Industrial Relations
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Outline

The *Dangerous Substances Act 2004* establishes a modern duty-based framework for the regulation of dangerous goods and hazardous substances in the ACT. The objective of the Act is to protect the health and safety of people and to protect property and the environment from damage from the hazards associated with dangerous substances.

This regulation repeals the Dangerous Substances (General) Regulation 2004 SL2004-09. The provisions of the latter regulation are incorporated into this regulation as part of the progressive development of the dangerous substances regulatory regime. This avoids the renumbering difficulties that would arise if the regulation were amended section by section. The new provisions establish additional requirements for the safe handling and storage of certain dangerous substances (chapter 2), and a licensing regime for prescribed security sensitive substances (chapter 4) along with consequential amendments to the Dangerous Substances (Explosives) Regulation 2004 (chapter 6).

Chapter 2, in conjunction with certain provisions of the Dangerous Substances Act, implements the nationally agreed framework for safe chemical management based on the National Standard for the Storage and Handling of Workplace Dangerous Goods (the "Dangerous Goods Standard") declared by the National Occupational Health and Safety Commission [NOHSC: 1015(2001)]. Chapter 2 also implements some elements of the National Model Regulations for the Control of Workplace Hazardous Substances [NOHSC:1005(1994)] where these overlap with provisions of the Dangerous Goods Standard. The Dangerous Goods Standard establishes a performance-based approach to chemical management through the principles of hazard identification, risk assessment and risk control.

Chapter 2 applies to dangerous goods classes 2, 3, 4, 5, 6.1, 8 and 9, C1 and C2 combustible liquids and "goods too dangerous to be transported". Radioactive substances (class 7) and infectious substances (class 6.2) are covered by other ACT laws. The transport of dangerous goods in the ACT is regulated through the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth).

The new requirements apply to manufacturers, importers and suppliers of dangerous substances where these activities are carried out in a business or commercial context. There are specific duties which each of these groups must comply with. These duties include:

- correctly classifying the substance;
- ensuring that it is in a safe condition for handling, and properly packed and labeled;
- storing the substance safely with proper signage; and
- keeping proper records and safety information.

The Dangerous Substances Act requires the preparation and documentation of a safety management system where dangerous substances are commercially handled. Manufacturers, importers and suppliers of dangerous substances must identify hazards, assess the associated risks, and put control measures in place. They also need to consult with employees and health and safety representatives about the safety management system and ensure employees receive proper induction and training, and are provided with information about the dangerous

substances in the workplace. The regulation requires that risk assessments be reviewed every five years.

People in control of premises where dangerous substances are handled and stored are responsible for control measures such as:

- controlling access to the site/substances;
- keeping plant and equipment properly maintained;
- ensuring there are no ignition sources in hazardous areas;
- preventing spills, and containing spills and leaks that do occur;
- preventing interaction with other substances;
- thoroughly cleaning tanks and containers;
- providing safety and personal protective equipment;
- providing fire protection and fire fighting equipment; and
- developing emergency procedures.

Safety data sheets (sometimes called material safety data sheets or MSDS) describe the chemical and physical properties of a substance and provide advice on its safe handling and use. The regulation requires manufacturers of a substance to prepare a safety data sheet. Persons in control of premises where dangerous substances are held must obtain and keep copies of safety data sheets.

The regulation requires premises where dangerous substances are held to be properly placarded. Placarding requirements are set out in the regulation and follow nationally and internationally agreed standards, e.g. a HAZCHEM outer warning placard. Placards are required to be displayed on all premises holding quantities at or over the specified "placard quantity".

Premises with larger or more dangerous amounts ("manifest quantities") of specified substances are also required to maintain manifests. Manifests provide emergency services personnel with information about the quantity, type and location of dangerous substances on a site. Emergency plans also have to be developed for premises where the quantity of dangerous substances is at or above "manifest quantity".

All premises at which dangerous substances are stored (or are likely to be stored) in quantities at or greater than the placard quantity threshold are defined as "registrable premises" must be notified through a "placard quantity notice" and registered. A person in control of premises that should be registered and are not registered will be subject to offences with large penalties. The regulation provides for a registration term of two years. Where there is a significant change of risk on a registered premises during this term, this change must be notified through a "risk change notice". The streamlined notification and registration provisions of the regulation replace the licensing system established through the repealed *Dangerous Goods Act 1975*.

Chapter 3 incorporates provisions which effectively prohibit the import, manufacture, supply (including sale), storage, use, re-use and installation of all types of asbestos in the ACT as part of a nationwide ban on the import and use of asbestos from 31 December 2003.

Chapter 4 establishes a licensing regime for all activities (manufacture, import, carriage, storage, supply, use, and disposal) along the supply chain in relation to prescribed "security sensitive substances". Fertilizer-grade ammonium nitrate is prescribed in Schedule 4 as a security sensitive substance as are the authorised purposes for which it can be used. The provisions implement the Council of Australian Governments' agreement to establish a nationally consistent, effective and integrated approach to controlling access to security sensitive ammonium nitrate, and establish a framework for the regulation of other security sensitive substances which might be identified in the future. Some elements of the security sensitive substances licensing regime are extended to the licensing of explosives and are reflected in the consequential amendments of the Dangerous Substances (Explosives) Regulation 2004 set out in part 6.4.

The Dangerous Substances Act provides for the administrative review of decisions of the Minister, the chief executive or an inspector which are prescribed in regulations. Section 187 provides that if the decision-maker makes a reviewable decision, the decision-maker must provide written notice to persons prescribed in regulations for the decision. Section 188 provides for the internal review of prescribed decisions. Chapter 5 of the regulation establishes a schedule of decisions which are reviewable, identifies the decision-maker and the persons to whom notice must given.

Chapter 6 sets out a number transitional provisions including licence terms and expiry of licences issued under the *Dangerous Goods Act 1975*, the repeal of the Dangerous Substances (General) Regulation 2004 which is replaced by this regulation, and amendments to the Dangerous Substances (Explosives) Regulation 2004 which for the most part are consequential to the new licensing provisions for security sensitive substances.

Notes on Chapters

Chapter 1 Preliminary

This chapter contains **sections 1** to **7. Sections 1** to **4** deal with formal matters such as the name of the regulation, the commencement dates for various provisions, and the roles of the dictionary and of notes in the regulation. **Section 2** specifies when the various parts of the regulation commence.

Sections 1 and **2** - which specify the name of the regulation and the commencement of the regulation - automatically commence on the notification day under section 75(1) of the *Legislation Act 2001*. Part 6.1 commences on the day after notification, as do minor technical amendments to the Dangerous Substances (Explosives) Regulation 2004 contained in **sections 669** and **672**.

All other provisions – with the exception of chapter 4 (Security sensitive substances) and related consequential amendments of the Dangerous Substances (Explosives) Regulation 2004 – commence on 31 March 2005. This provides a transitional period following notification during which ACT businesses can put in place arrangements which comply with the safe storage and handling provisions of the new regulation.

The security sensitive substance provisions within chapter 4 and Schedule 4 will commence on the nationally agreed commencement date of 30 June 2005 as will listed provisions that are consequential amendments to the Dangerous Substances (Explosives) Regulation 2004 to require the same level of security and background checking for explosives licences that will be required for security sensitive substances.

Section 5 prescribes a number of documents as "incorporated documents" for this regulation. It also explains the relationship between this regulation and incorporated documents, including provision that if this regulation requires compliance with an incorporated document, the provision of the document must be complied with even if the document is drafted in advisory terms. Sections 9 and 220 of the Act prescribe matters concerning incorporated documents.

Section 6 explains the meaning of "ensure" where a provision of this regulation requires a person to ensure something is or is not done and provides that the requirement is satisfied where the person takes reasonable steps to eliminate the hazards and eliminate or minimise the risks. "Reasonable steps", "hazard" and "risk" are defined in the Act and are concepts central to systematic approaches to safety management.

Section 7 instructs that the ACT *Criminal Code 2002* applies to offences under the regulation. There are a number of offences in the regulation which are "strict liability" offences. Section 23 of the Criminal Code provides that if an offence is a strict liability offence, there are no fault elements for any of the physical elements of the offence. In addition to other defences, the defence of mistake of fact under section 36 of the code also applies to strict liability offences. Section 223 of the Dangerous Substances Act provides that the maximum that can imposed for an offence against a regulation made under the Act is 30 penalty units. A number of the more serious offences in this regulation attract a maximum penalty of 30 penalty units. This recognises the serious consequences that can potentially arise from a contravention of the relevant provisions.

Chapter 2 Certain dangerous substances

Part 2.1 Important concepts

This part explains important concepts and terms that are central to understanding the purpose and operation of chapter 2. These include the dangerous substances classes to which the provisions of the chapter apply in the context of handling in the course of trade or commerce. This makes it clear that these requirements are not applicable in non-commercial and domestic settings. **Division 2.1.3** explains the meaning of important concepts related to quantities of dangerous substances. These concepts are based on nationally agreed definitions of quantities set out in the National Standard for the Storage and Handling of Workplace Dangerous Goods [NOHSC: 1015(2001)]. "Placard quantity" and "manifest quantity" establish thresholds for the application of specific controls. **Section 206** also explains how the total quantity of dangerous substances at the premises is to be determined.

Division 2.1.4 explains that a "registrable premises" is one at which dangerous substances are present (or likely to be present) in quantities equal to or greater than the placard quantity. All registrable premises are subject to the requirements for notification and registration in part 2.6. "Manifest quantity registrable premises" are subject to additional requirements in relation to manifests and emergency plans. The National Standard for the Storage and Handling of Workplace Dangerous Goods includes provision for notification of premises where dangerous goods are present (or likely to be present) in quantities equal to or greater than the manifest quantity. This regulation imposes a lower notification threshold. Notification and registration of these sites will enable better collection of information about the location of dangerous chemicals in larger amounts across the Territory and is in the interests of public safety and an orderly audit program.

Part 2.2 Manufacturers, importers and suppliers

Sections 211 to **214** impose requirements upon manufacturers, importers and suppliers to ensure dangerous substances are correctly classified, correctly packed, and correctly labelled. These provisions require consistency with the Australian Dangerous Goods Code. The Code is an "incorporated document" under section 10 of the Dangerous Substances Act. Failure to comply with the requirements about packing, marking and supply could amount to an offence under provisions of the *Dangerous Substances Act 2004*.

Sections 215 to **217** impose requirements for dangerous substances to be accompanied by accurate, legible and detailed safety data sheets and sets out the detailed requirements of what must be included in a safety data sheet and how safety data sheets are to be presented. Safety data sheets are generally referred as "material safety data sheets" in other Australian jurisdictions. The use of the term "safety data sheet" in this Regulation is consistent with international usage in the context of the Globally Harmonised System (GHS) of Classification and Labelling of Chemicals and anticipates the adoption of the GHS in Australia. Failure to comply with the requirements about safety data sheets is likely to amount to an offence under provisions of the *Dangerous Substances Act 2004*.

The requirements for safety data sheets are supplemented by two provisions (**sections 218** and **219**) that enable doctors or persons responsible for health and safety to seek additional information to what is provided in a safety data sheet. Doctors can ask for additional information where the doctor believes on reasonable grounds that the information may help the doctor treat a patient. A manufacturer or importer must immediately comply with a request of

this nature. Failure to do so is a strict liability offence with a maximum penalty of 15 penalty units.

Similarly, a responsible person may also request additional information if the person believes on reasonable grounds that the need for the additional information is justified and the person must state these reasons in the request. A request of this nature is only justified if it would help protect the health and safety of persons who may be exposed to the substance. It is a strict liability offence with a maximum penalty of 15 penalty units if the information provided is used for any other purpose than that contemplated by the provisions. This reflects the need to protect information which is commercially sensitive.

Failure to respond in writing within 30 days is a strict liability offence with a maximum penalty of 15 penalty units. The written response must either disclose the necessary information, reject the request and give reasons for doing so, or reject the request but provide alternative information that will assist in protecting the health and safety of people exposed to the substance.

Part 2.3 Registrable premises—safety management systems

Part 2.3 establishes requirements for the preparation, documentation and implementation of safety managements systems for all registrable premises in the ACT. Preparation of safety management systems must be based on a process of hazard identification considering a range of matters, including information contained in safety data sheets, handling systems, and manufacturing and transport processes. Incidents that have occurred involving the substance should also be considered. Such incidents could be incidents that occurred at the premises, or could be incidents that are known, or are reasonably expected to be known, to the person preparing the safety management system. A person's knowledge of incidents that have occurred at other locations could be through prior work experience, incidents described in occupational health and safety bulletins or through internal company memorandum about incidents that have occurred in other Australian jurisdictions.

Part 2.3 also contains a strict liability offence with a maximum penalty of 15 penalty units if a person in control of registrable premises fails to do everything reasonable to find out about the hazardous properties of a substance. For example, a person in control of registrable premises should obtain and be familiar with the information provided on safety data sheets for the substances handled. Similarly, the person should obtain all relevant information about the potential interaction and compatibility of substances handled at the premises.

Where a hazard is identified the person in control of the premises must ensure that a written assessment is made of the risks associated with the hazard which states the methods considered and ultimately chosen for controlling the risks identified. Important principles of substitution (of alternative substances with lower handling risks) and reduction (of quantity) are set out in **section 227**. A dated copy of that assessment must be kept at the premises and be available to persons who might be exposed to the hazard while working at the premises.

Risk assessments must be reviewed whenever a significant change occurs or there is evidence to suggest the risk assessment is no longer adequate. If the review results in an amendment, a revised risk assessment must be kept indicating the date of amendment. Risk assessments must also be reviewed five years after the assessment was first prepared, if it has not been necessary to review the assessment earlier.

When reviewing risk assessments, the reviewer should consult with employees who carry out the work and with health and safety representatives. If a risk assessment has been made in relation to a hazard at registrable premises, a copy of that risk assessment must be made available to anyone who is likely to be exposed to the hazard while working at the premises.

Part 2.4 Registrable premises—risk control

Division 2.4.1 (Registrable premises—isolation, stability and interaction) contains obligations about handling of dangerous substances that are supported by strict liability offences. These obligations are imposed on the person in control of registrable premises.

Section 228 establishes an obligation to ensure that the risk to outside persons and property from a dangerous occurrence that could happen at the premises is eliminated, or reduced as far as possible, by separation distances or physical barriers.

Section 229 imposes an obligation upon a person in control to ensure that a dangerous substance does not become unstable, decompose or begin to change in a way that would create a new hazard or increase an existing risk. Furthermore, if it is necessary to use stabilisers or to keep a dangerous substance below a set temperature in order to keep the substance stable, the person in control is obligated to ensure this occurs. **Section 229(5)** details what is meant by a "stabiliser" and contains examples of stabilisers. **Section 229** does not apply if the dangerous substance is about to be used in a manufacturing process.

Other obligations under **division 2.4.1** include ensuring that a dangerous substance at the premises does not interact with an incompatible substance, and ensuring that a dangerous substance does not contaminate food, food packaging or personal use products. Accordingly, dangerous substances handled should be kept away from kitchen areas, and places (such as staff lockers) where personal products are kept.

The maximum penalty available for each of the offences in **division 2.4.1** is 30 penalty units.

Division 2.4.2 contains obligations about plant and structures used for dangerous substances that are supported by strict liability offences. These obligations are imposed on the person in control of registrable premises.

One obligation is to ensure that tanks in which dangerous substances are stored in bulk, and any associated pipework, have stable foundations and supports, are protected from corrosion and are inspected at appropriate intervals. It is also necessary to ensure any pipework or equipment connected to the tank is installed in a way that prevents excessive stress to the tank and the pipes and equipment. Records of all inspections must be made and kept at the premises.

Section 233 imposes an obligation upon a person in control when a container at registrable premises is being decommissioned because the container is being disposed of or will no longer used to hold a particular substance. The person in control must ensure that the container is thoroughly cleaned and returned to the state it was in before the substance was added. This is to ensure that when the container is next used, there is no trace of the previous substance that could react with the new substance. If the substance is a gas or volatile liquid, the concentration of the gas or vapour in the container must be less than the concentration listed in the National Exposure Standards for the substance. Furthermore, if the dangerous substance is a class 2.1 or 3 dangerous substance or is of a subsidiary risk 3, the concentration of the

substance must be less than 5% of the lower explosive limit for substance at ambient temperature.

Another obligation under **division 2.4.2** is to ensure that any plant at the premises used with dangerous substances is protected against damage, and from impact with vehicles and other plant.

Personal protective equipment is a basic and fundamental safety requirement that must not be neglected. Accordingly, under **section 235**, a person in control of registrable premises must ensure that an exposed person is required to use personal protective equipment whenever the person is, or may be expose to the dangerous substance. In doing so, the person in control must also ensure that the personal protective equipment provided for the exposed person's use is suitable for that use, undamaged and effective, and maintained in good condition.

Section 235(4) also contains an offence with a maximum penalty of 30 penalty units if any person engages in conduct that damages or makes ineffective any personal protective equipment. This offence contains a mental element requiring that it be proved that the offender intended the act or omission. This ensures that accidental damage of personal protective equipment resulting from the ordinary use of the equipment is not an offence.

The maximum penalty available for each of the offences in **division 2.4.2** is 30 penalty units.

Division 2.4.3 obligates a person in control of registrable premises to ensure there is sufficient and suitable lighting to enable safe access to all parts of the premises where dangerous substances are handled, and that safe access to those same areas is provided and maintained. Failure to do so is to contravene a strict liability offence carrying a maximum penalty of 20 penalty units.

A person in control of registrable premises must also ensure that unauthorised persons do not have access to dangerous substances at the premises. Breaching this requirement is also a strict liability offence, but carries a maximum penalty of 30 penalty units.

Spills are a potential risk for any premises that handles dangerous substances, and as such, **Division 2.4.4** imposes obligations upon a person in control of registrable premises, and these obligations are supported by strict liability offences. Under **sections 239** and **240,** the person in control of registrable premises must ensure any risks are eliminated, or if it is not practicable to eliminate the risks, that the risks are minimised.

Section 239 requires the establishment of spill containment systems for spills and leaks, and that a spill containment systems cannot create a further risk by bringing incompatible substances together should a leak or spill occur. Where a leak or spill does occur, the section also requires immediate action regarding the risk and that the substance or effluent are cleaned up, disposed of or otherwise made safe as soon as practicable.

The requirements for the safe transfer of substances from area to area, or from or into a container are established by **section 240**. The provision requires spills, leaks and overflows to be avoided and for any static electricity and any vapour generated because of the transfer be minimised. Also required is the elimination or control of ignition sources, and that pipework used is appropriate for the substance and adequate for the transfer.

Clean up equipment suitable for the dangerous substance or substances handled must be kept at the premises, maintained in good condition and accessible to persons at the premises under **section 241**.

The maximum penalty available for each of the offences in **division 2.4.4** is 30 penalty units.

There are two strict liability offences under **division 2.4.5**. The first is where a person in control of registrable premises fails to ensure ignition sources in a hazardous area are eliminated, or if elimination is not practicable, fails to ensure those sources are minimised. **Section 242(3)** refers to relevant Australian and New Zealand Standards that establish what is a hazardous area. The maximum penalty available for this offence is 25 penalty units.

The other offence is where a person in control fails to ensure that any risks associated with atmospheric conditions that are flammable, explosive or asphyxiant are eliminated, or if elimination of those risks is not practicable, fails to ensure those risks are minimised. The maximum penalty available for this offence is 30 penalty units.

Division 2.4.6 contains only **section 244** that requires a person in control of registrable premises to ensure the premises have adequate fire protection. This requires an appropriate fire protection system to be designed and constructed that uses firefighting methods adapted for the substance(s) and the quantities held. This fire protection system must also be properly installed, tested and maintained, accessible to persons at the premises and to emergency services, and that fire hydrants and hose coupling points are suitable for use by firefighters. Records of testing and maintenance must also be dated and kept. These requirements are supported by a strict liability offence with a maximum penalty of 30 penalty units.

Section 244 also requires a person in control of registrable premises to take specific steps should part or all of a fire protection system become unserviceable or inoperative. Failure to take these steps is also a strict liability offence with a maximum penalty of 30 penalty units.

Part 2.5 Registrable premises—information

Division 2.5.1 contains requirements aimed at ensuring that persons (substance handlers, plant users, and visitors to registrable premises) are given appropriate information about hazards and safety on the site. **Section 245** requires a person in control of registrable premises to be give induction, information, training and supervision to anyone who handles a dangerous substance, whether they are employees or contractors, and in a language and way appropriate to the handler and relevant to the handling activity. Accordingly, if English is a second language for a handler, or the handler is illiterate, the person in control must take these matters into consideration. Induction, information and training must include instruction about the matters listed in **section 245(3)** paragraphs (a) to (e).

In addition, the person in control must make a record of induction, information, trading and supervision given under **section 245** and keep those records for five years. Even if dangerous substances stop being handled at premises within the five-year period, the record must still be kept by the person in control until the five-year period has elapsed. The person in control must also provide a copy of a record to an inspector upon request.

Failure to comply with any requirement in **section 245** is a strict liability offence with a maximum penalty of 30 penalty units.

Sections 246 and **247** also require a person in control of registrable premises to give information on procedures for the safe operation of plant to any person who is to operate the plant, in order to ensure any risks are eliminated, or if this is not practicable, the risks are minimised. Information, safety instructions and supervision must also be provided to any visitors to the premises for the same purpose. Again, failure to comply with these requirements is a strict liability offence that carries a maximum penalty of 30 penalty units.

Under **division 2.5.2** a person in control of registrable premises is required to keep specific information and to ensure that the information is maintained and up-to-date. One such requirement is for safety data sheets for each substance handled at the premises to be obtained, and for current safety data sheets to be accessible to anyone that handles the substance under **section 248**. The same provision obliges a person in control not to amend a safety data sheet except under **section 215** or where it is necessary to enable a safety data sheet prepared overseas to be understood more easily. Contravention of this obligation is a strict liability offence that carries a maximum penalty of 30 penalty units.

This obligation does not extend to a dangerous substance if it is regarded as being in transit under this regulation, or is handled at a retail outlet or warehouse in an unopened and correctly packed and labelled packaged form. However, the person in control must ensure that alternative information about the safe handling of the substance is readily accessible instead. Again, failure to comply with this requirement is a strict liability offence with a maximum penalty of 30 penalty units.

Section 248(4) requires a person in control to ensure that if alternative information is provided, it is consistent with the information in a safety data sheet, and is clearly identified as information that provided by the person. The provision is supported by a strict liability offence with a maximum penalty of 30 penalty units.

A person in control of registrable premises is also required to keep a register at the premises that lists each dangerous substance handled at the premises and a copy of the safety data sheet for each dangerous substance handled. This register must be readily accessible to people at the premises. A person in control who does not comply with this obligation, commits a strict liability offence that carries a maximum penalty of 30 penalty units. This obligation does not extend to a dangerous substance if it is in a package that is not large enough to require marking under the Australian Dangerous Goods Code or if it is regarded as being in transit under this regulation.

Under **section 250**, a person in control of premises who ceases to be in this capacity, must ensure that any documents listed in **section 250**, such as risk assessments and emergency plans, remain at the premises when he or she departs. Similarly, the new person in control is also obligated to ensure all records listed in **section 250** remain at the premises. Should either person fail to comply with their obligation under this provision, he or she commits a strict liability offence that carries a maximum penalty of 20 penalty units.

Ensuring that packages containing dangerous substances bear labels and that those labels are correct is a fundamental safety requirement under the dangerous substances legislation. Accordingly, under **division 2.5.3**, if a person in control of registrable premises accepts a package containing dangerous substances that the person knows, or ought to know, are incorrectly labelled, the person is obliged under this provision to act immediately to correct the existing labeling or re-label the package so that the package is correctly labelled. This offence

contains a mental element requiring that it be proved to the requisite standard that the offender intended the act or omission, or was either reckless or negligent about the act or omission. The maximum penalty for an offence under this provision is 30 penalty units. Naturally, there is nothing preventing a person in control from refusing to accept an incorrectly labelled package of a dangerous substance.

Clearly, packaged dangerous substances that cannot be properly identified, or for which information is unavailable because the labeling has been removed or has become illegible is equally as hazardous as incorrectly labelled packages. For comparable reasons, a person in control of registrable premises must ensure that while a package containing a dangerous substance is at the premises the package remains correctly labelled, and that the label is neither removed or becomes illegible. Failure to comply with this requirement is a strict liability offence with a maximum penalty of 20 penalty units. Similarly, a person in control of registrable premises must ensure that packaging labelled to indicate it contains one type of dangerous substance must not be used to house another kind of dangerous substance, or indeed any other substance. Failure to comply with this requirement is also a strict liability offence with a maximum penalty of 20 penalty units.

Where dangerous substance are transferred into portable containers for use at the premises, the person in control must ensure the portable container is then labelled with the dangerous substance class label, subsidiary risk label and product name of the substance. Where it is not possible to label a portable container in this manner, the person in control must ensure the substance is clearly identified. Failure to meet this obligation is a strict liability offence with a maximum penalty of 25 penalty units. The obligations do not apply, however, if the substance is used immediately and the portable container is then thoroughly cleaned to return the container to the state it was in before the substance was added. This is to ensure that when the portable container is next used there is no trace of the previous substance that could react with the new substance.

Division 2.5.4 imposes requirements to for the display of placards at registrable premises, as well as the required locations and form of placards. As stated in relation to section 208, registrable premises are those at which dangerous substances are, or likely to be present, in at least the placard quantity. Placard requirements are set out in **schedule 2** of this regulation following the National Standard for the Storage and Handling of Workplace Dangerous Goods [NOHSC: 1015(2001)]. The form and colour of the Class label and Subsidiary Risk label are specified in the Australian Dangerous Goods Code.

Placarding provides critical information about the properties of dangerous substances at the premises and is and essential part of safety communication including to emergency services personnel who may be required to attend an incident on the site. Failure to comply with a requirement about placard locations and visibility in **division 2.5.4** is to commit a strict liability offence with a maximum penalty of 30 penalty units. Failure to comply with a requirement about placard forms in **division 2.5.4** is to commit a strict liability offence with a maximum penalty of 25 penalty units.

Part 2.6 Registrable premises—registration

A pivotal aspect of the regulation is the requirement for premises that have, or are likely to have, dangerous substances above a prescribed quantity to notify the chief executive in order to be registered. The registration requirements in this regulation replace licensing arrangements in the repealed Dangerous Goods Act. The requirements establish a

streamlined framework for managing critical information about the locations of larger quantities of dangerous substances in the Territory.

If a person in control of premises that are not already registered knows, or ought reasonably to know, that the premises under his or her control have, or are likely to have, dangerous substances at the placard level or above, then the person in control is required to notify the chief executive. Failure to make the notification constitutes an offence. The penalty for a contravention of this offence is 30 penalty units if the dangerous substance(s) at the premises are, or are likely to be at least the manifest level. If the amount is, or is likely to be less than the manifest level, the maximum penalty is 20 penalty units. This reflects the increased hazards associated with manifest level premises and the importance of proper registration to the effectiveness of the regulatory regime.

The offence within **section 261** contains a mental element requiring that it be proved to the requisite standard that the offender intended the act or omission, or was either reckless or negligent about the act or omission.

Notification is not just required when premises have dangerous substances at the placard level, but also when the premises is likely to have dangerous substances at that level. This recognises that it is possible for premises to have dangerous substances at a placard level periodically. For example, premises may be at the placard level when a tank at the premises is at 70% of its capacity or greater. In such a situation, irrespective of how often or for how long the tank is below 70% capacity, the premises are likely to have a placard level and accordingly must be registered.

Another possible example is where premises are being constructed. If the person in control installs a tank at the premises that has a capacity greater than the placard level, after installation the premises is likely to be the placard level and therefore require notification, even though no substances are present yet nor has work begun at the premises.

Notification is also required where a person in control ought to know that the premises are or are likely to be at the placard level, and not just when the person in control actually knows. If premises have been operating with dangerous substances at just under the placard level, the person in control ought to know that a significant increase will result in the premises requiring registration. Similarly, if premises have a 10 000L tank the person in control ought to know the premises require registration, as at that level the premises will be at the placard level irrespective of which dangerous substance is kept in the tank.

A notification notice must include information about the substance or substances at the premises, such as the class or kind, the expected average amount present and the maximum amount that can be present. Other information listed in an approved form is also required.

Upon receipt of a notification notice, the chief executive may issue a written “further information notice” seeking further information from the person in control. This notice must give the person in control 14 days or more to respond to the notice. Failure to respond to the notice is a strict liability offence. The penalty for a contravention of this offence is 30 penalty units if the dangerous substance(s) at the premises are, or are likely to be at least the manifest level. In any other circumstance, the maximum penalty is 20 penalty units. This also reflects the increased hazards associated with manifest level premises and the importance of proper registration to the effectiveness of the regulatory regime.

If the chief executive does not issue a further information notice, the chief executive must register the premises. This requires the maintenance of a register of premises and the issuing of written notices to premises that have been registered.

A registration of premises remains in force for a period of two years, where upon a person in control must renew the registration by again notifying the chief executive. Irrespective of how many times the premises have previously been registered, upon each notification the chief executive is entitled to issue a further information notice if the chief executive determines it is necessary.

Sections 265 and **266** make provision for further notification and information where there is a significant change of risk at a registered premises. Once premises have been registered, the person in control has an ongoing obligation to report the chief executive any significant changes in risks, or likely changes, that the person in control knows or ought to know about. Such a notice, known as a “risk change notice", must be in writing. Whether a change at the premises is a significant change must be determined by the person in control, and may arise from a risk assessment conducted or through obvious factors such as an increase or decrease in production. This ongoing process of risk assessment is fundamental to the performance-based character of the chapter 2 requirements, as is the embedding of responsibility for safe handling into the management system of the undertaking.

What is likely to constitute a significant change of risk is quite varied. An increase in the quantity of a substance at the premises, such as from a placard level to a manifest level is a significant change, as would be a decrease in the quantity held so that the premises is no longer at the placard level. The erection of a new structure at the premises that could affect separation distances and emergency procedures could also be a significant change. Another possible change that would be significant would be a change in production processes, if a different dangerous substance were to be used instead of another.

The chief executive may also issue a further information notic*e* upon receipt of a risk change notice from the person in control. The further information notice must give the person in control 14 days or more to respond to the notice. Failure to respond to the notice is a strict liability offence.

The penalty for a contravention of offences under sections 265 and 266 is 30 penalty units if the dangerous substance(s) at the premises are, or are likely to be at least the manifest level and 20 penalty units for placard levels. In any other circumstances, the maximum penalty is 10 penalty units.

Upon receipt of a risk change notice, the chief executive must amend the placard quantity register to reflect the information contained in the notice and give the person in control written notice of the amendment. If the change of risk notified is that the premises is now below the placard quantity level, and the chief executive is satisfied that the premises no longer need to be registered, the chief executive must cancel the registration. Again, written notice of the cancellation must be provided to the person in control.

Part 2.7 Registrable premises—dangerous occurrence reporting

Division 3.1.5 of the Act deals with obligations to report dangerous occurrences. What constitutes a dangerous occurrence is defined in section 38 of the Act. Under section 39 of the Act, people in control of premises have a safety duty that requires them to report actual or likely

dangerous occurrences at those premises. The purpose of this safety duty is to ensure that remedial action can be taken promptly to ensure seriously hazardous situations do not occur or are minimised as quickly as possible. The person in control of premises is obliged to tell the chief executive immediately once the person becomes aware of the likely or actual dangerous occurrence, or as soon as possible thereafter.

Section 268 of the regulation applies whenever a person in control of premises is required to report an actual or likely dangerous occurrence under Division 3.1.5 of the Act. In addition to the requirements imposed by the Act, the person in control must ensure that a written record is made of what the person in control has reported to the chief executive under the Act. A dated copy of this record must then be retained at the premises. Failure to keep a written record, or to keep the record at the premises, is a strict liability offence with a maximum penalty of 15 penalty units. Failure to report a dangerous occurrence is an offence under the Act.

Furthermore, the record made by the person in control must contain all information listed in **section 269(2)** paragraphs (a) to (g). It is strict liability offence with a maximum penalty of 15 penalty units to omit any of these matters.

Records of dangerous occurrences must be retained for a period of ten years after the chief executive is notified of the dangerous occurrence, irrespective of whether the dangerous substances or the particular dangerous substance involved in the incident have ceased to be used at the premises. An inspector under the Act may ask for a copy of a record of a dangerous occurrence at any time within the ten-year period. Failure to comply with such a request is a strict liability offence with a maximum penalty of 15 penalty units.

Part 2.8 Manifest quantity registrable premises

Additional obligations are imposed upon "manifest quantity registrable premises" under part 2.8. **Division 2.8.1** requires a manifest that complies with **schedule 3** to be kept at the premises, and for the manifest to be kept up-to-date. Manifests must be kept inside in a red weatherproof container at a location as close to the main entrance to the premises as possible and that is readily accessible to emergency services. Failure to comply with one of the requirements in **division 2.8.1** is to commit a strict liability offence with a maximum penalty of 30 penalty units.

Manifest quantity registrable premises must also incorporate an emergency plan into the safety management system. An emergency plan is a written record of a plan to manage dangerous occurrences that may arise at the premises. **Division 2.8.2** also contains several provisions imposing obligations that are supported by strict liability offences with maximum penalties of 30 penalty units. These requirements include providing instruction on the emergency plan to health and safety representatives at the premises and to occupiers of neighbouring premises. Emergency plans must be reviewed whenever a significant change occurs at the premises, or if there is evidence that the emergency plan is no longer adequate. Should a review result in an amendment to the emergency plan, a dated amended plan must be kept at the premises and provided to specified entities and persons.

Emergency plans must also be reviewed five years after the plan was first prepared, if it has not been necessary to review the plan earlier, or five years after the plan was last reviewed. When reviewing emergency plans, the reviewer should consult employees who carry out the work, health and safety representatives, emergency services and persons in control of neighbouring premises.

Failure to comply with one of the requirements in **division 2.8.2** is to commit a strict liability offence with a maximum penalty of 30 penalty units.

Part 2.9 Non-registrable premises

Premises that do not need to be registered, known as "non-registrable premises", still have a range of obligations under the regulation. These provisions are generally less onerous than for premises at the placard level and above, and penalties for contraventions of offences are generally lower than equivalent offences elsewhere in the regulation.

There are two provisions within part 2.9 that carry the same maximum penalties and impose requirements similar to those for registrable premises. Personal protective equipment is a basic and fundamental safety requirement that must not be neglected regardless of the nature or size of the premises or the substances handled. Accordingly, contravention of a requirement in **section 285** is equally as serious as a contravention of **section 235**. Another fundamental and basic safety requirement is the provision of information to substance handlers so that such exposed persons work and operate in an informed manner. As such, the maximum penalty for contravening a provision in **section 294** is 30 penalty units.

Sections 285(4) and **299A** of part 2.9 have offences that contain a mental element requiring that it be proved that the offender intended the act or omission. All other offences in part 2.9 are strict liability offences.

Non-registrable premises are not required to display HAZCHEM placards as non-registrable premises have dangerous substances below the placard level in **Schedule 1**. However, non-registrable premises must still display information placards for tanks in accordance with **section 299B**.

Chapter 3 Asbestos and asbestos products

This chapter contains **sections 306** to **321** that effectively prohibit the import, manufacture, supply (including sale), storage, use, re-use and installation of all types of asbestos. In May 2001, the Workplace Relations Ministers' Council agreed to a nationwide ban on the import and use of asbestos from 31 December 2003. The Dangerous Goods (Asbestos) Amendment Regulations 2003 which gave effect to the nationally agreed ban were repealed by the commencement of the *Dangerous Substances Act 2004* and the Dangerous Substances (General) Regulation 2004 in April 2004. The asbestos provisions are now incorporated into chapter 3 of this regulation.

Chapter 4 Security sensitive substances

Chapter 4 imposes tighter controls on dangerous substances determined to be of a security sensitive nature in order to minimise the danger of such substances, such as fertilizer-grade ammonium nitrate, being used by terrorists to create bombs or other means of injuring people or damaging property.

On 25 June 2004, the Council of Australian Governments (COAG) agreed that all Australian States and Territories would introduce regulatory arrangements for the control of fertilizer-grade ammonium nitrate in line with nationally agreed principles. The regulatory scheme contained in Chapter 4 gives effect to the COAG decision in a manner that can be readily applied to any other substance that is later identified to have security risks or terrorist applications.

Explosives-grade ammonium nitrate is already regulated under the Dangerous Substances (Explosives) Regulation 2004.

Part 4.1 Important concepts

This part explains important concepts and terms that are central to understanding the purpose and operation of chapter 4. **Section 400** establishes that a security sensitive substance is a substance listed in **schedule 4** or a substance, other than an explosive, determined in writing by the Minister to be a security sensitive substance. Any determination by the Minister under this section is a disallowable instrument.

Explosives, or substances determined to be explosives, are regulated under the Dangerous Substances (Explosives) Regulation 2004. Consequential amendments to the Explosives Regulation will apply the same security checking procedures for explosives licensing as for security sensitive substances. Chapter 2 requirements for the safe storage and handling of dangerous substances will apply to security sensitive substances. The Explosives Regulation also contains explosives-specific safety duties and offences.

Part 4.2 Security sensitive substances—general duties

It is a general duty imposed on all persons licensed to handle security sensitive substances that on becoming aware of the loss or theft of a security sensitive substance from premises where the substance was stored, the responsible person must inform the chief executive and a police officer without delay. The responsible person must also give the chief executive a written report setting out details of the incident, including the amount of the security sensitive substance lost or stolen. Failure to abide by this general duty is a strict liability offence that has a maximum penalty of 30 penalty units.

An identical offence is contained in the Dangerous Substances (Explosives) Regulation 2004 reflecting the equal importance of security of explosives and security sensitive substances .

Part 4.3 Security sensitive substances—general licence requirements

In addition to the matters listed in section 49 of the Act, when determining under part 4.3 whether a person is suitable to hold a licence to handle a security sensitive substance the chief executive must have regard to whether an adverse or qualified security assessment has been given in relation to the person or a close associate of the person. Where the applicant for the licence is a corporation, the chief executive must have regard to whether an adverse or qualified security assessment has been given in relation to an officer of the corporation or a close associate of an officer of the corporation. Security assessments are conducted and issued by the Australian Security Intelligence Organisation (ASIO) under part 4 of the Commonwealth *Australian Security Intelligence Organisation Act 1979.*

Under chapter 4, not only are licence applicants security-checked, but so are all persons who will have access to the security sensitive substance when not under the supervision of the licence-holder. A further measure designed to control access to security sensitive substances is to limit the issuing of licences to handle security sensitive substances to prescribed authorised purposes. Authorised purposes will vary for each security sensitive substance, and will be listed next to the relevant security sensitive substance in **table 4.1** of **schedule 4**. If an activity or purpose is not listed in the table, it is not authorised and a licence to handle the substance will not be issued for that purpose.

An authorised use of security sensitive ammonium nitrate includes use in commercial agriculture by primary producers. Domestic household use and use for recreational facilities, such as golf courses or bowling greens, are not prescribed purposes for which security sensitive ammonium nitrate can be authorised.

Part 4.4 Manufacturing security sensitive substances

Part 4.4 requires the manufacture of security sensitive substances to be licensed. **Section 409** provides that an application for a manufacturing licence must include specified information and be accompanied by copies of the applicant's identification papers and those of anyone who is to be a responsible person for the security sensitive substance. The licence applicant will also need to specify the purpose of the manufacture and the address of the premises where the manufacture is to occur. Of significant importance is the requirement for a security plan for the proposed manufacture to be provided with the licence application.

In order to manufacture security sensitive substances in the ACT, a security plan must be formulated in accordance with **section 410**. The security plan must be based on a written risk assessment addressing and identifying security risks associated with the manufacture of the particular substance. A security risk assessment should consider both the security risk posed and the source of that security risk. Risks to consider include theft, deliberate destruction such as arson, sabotage or contamination, and unauthorised access to the premises.

The security plan should describe how a licensee will meet the compulsory requirements and what security measures are included, but must also detail the production process to be used and the ingredients to be used along with where those ingredients are to be sourced. The security plan must also establish recording and reconciliation protocols, as well as procedures for reporting losses, thefts and attempted thefts.

Section 411 imposes conditions on persons manufacturing security sensitive substances in the ACT. Licensed manufacturers may only manufacture the substance for the purpose or purposes stated in the licence, and must not allow a person to have unsupervised access to the substance unless the person is named in the licence as a "security cleared responsible person". It is a condition of the licence that the security plan devised must be complied with. Furthermore, the licensee must apply to the chief executive to amend the licence if the licensee proposes to add, remove or change the name of a security cleared responsible person listed in the licence. The provision also confirms that the licensee must comply with all obligations imposed directly upon the licensee under part 4.4.

Part 4.4 also requires creation of records about the type and quantity of security sensitive substances manufactured and the date(s) of manufacture. It is also necessary to record whether the manufacture was for immediate use or supply, or if the security sensitive substances were manufactured and then stored, and if stored, details about the storage. These records must be retained for a period not less than three years. Failure to comply with either requirement is a strict liability offence that has a maximum penalty of 20 penalty units.

Part 4.5 Importing security sensitive substances

Part 4.5 requires the import of security sensitive substances into the ACT to be licensed. **Section 417** provides that an application for an import licence must include specified information and be accompanied by copies of the applicant's identification papers and those of anyone who is to be a responsible person for the security sensitive substance. The licence

applicant will also need to specify the purpose of the import, as well as the name and classification of the of security sensitive substance that will be imported.

Section 418 imposes conditions on persons importing security sensitive substances into the ACT. Licensed importers may only import the substance for the purpose or purposes stated in the licence, and must not allow a person to have unsupervised access to the substance unless the person is named in the licence as a security cleared responsible person. Furthermore, the licensee must apply to the chief executive to amend the licence if the licensee proposes to add, remove or change the name of a security cleared responsible person listed in the licence. The provision also confirms that the licensee must comply with all obligations imposed directly upon the licensee under part 4.5. Each of these conditions is a licence condition.

A holder of a licence authorising the importing of security sensitive substances must notify the chief executive of an intention to import security sensitive substances. Notification must contain specific information such as the intended date of import.

Section 420 contains a strict liability offence for failing to make a record of security sensitive substances imported into the ACT under the licence, and also for failing to keep those records for at least three years. The offence has a maximum penalty of 20 penalty units.

Part 4.6 Carrying security sensitive substances

Part 4.6 applies to the carrying by road or rail of security sensitive substances. For some security sensitive substances, carriage of quantities below a threshold quantity listed in **table 4.1** of **schedule 4** will not require a carrying licence. For certain security sensitive substances, an exemption of this nature is necessary to enable licensed handlers to carry smaller quantities between sites, such as from a storage facility to the location of intended use without the burden of obtaining a carrying license.

A person is authorised to carry security sensitive substances in the ACT by road only if the person holds a carrying licence issued in the ACT or an equivalent licence from another jurisdiction, referred to as an "interstate security sensitive substance carrying authority".

Similarly, under **section 424**, a person is authorised to carry security sensitive substances in the ACT by rail only if the person holds a carrying licence authorising carriage by rail issued in the ACT, or an interstate security sensitive substance carrying authority authorising carrying by rail.

Section 425 creates a strict liability offence with a maximum penalty of 30 penalty units for engaging someone else to carry a security sensitive substance by road or rail, unless that person is authorised under **section 423** or **section 424**.

Section 427 provides that an application for a carrying licence must include specified information and be accompanied by copies of the applicant's identification papers and those of anyone who is to be a responsible person for the security sensitive substance. The licence applicant will also need to specify the purpose of the carrying and the details of each vehicle to be used for the carrying. Of significant importance, is the requirement for a security plan for the proposed carriage to be provided with the licence application.

In order to carry security sensitive substances in the ACT, a security plan must be formulated in accordance with **section 428**. The security plan must be based on a written risk assessment

addressing and identifying security risks associated with the carriage of the particular substance. A security risk assessment must consider both the security risk posed and the source of that security risk. Risks to consider include theft, deliberate destruction such as arson, sabotage or contamination, and unauthorised access to the vehicle.

The security plan should describe how a licensee will meet the compulsory requirements and what security measures are included, but must also detail the precautions taken to ensure the security sensitive substances carried are secure. The security plan must also establish recording and reconciliation protocols, as well as procedures for reporting losses, thefts and attempted thefts.

Section 429 imposes conditions on persons carrying security sensitive substances in the ACT. Licensees may only carry the substance for the purpose or purposes stated in the licence, and must not allow a person to have unsupervised access to the substance unless the person is named in the licence as a security cleared responsible person. It is also an essential condition of the licence that the security plan devised must be complied with. Furthermore, the licensee must apply to the chief executive to amend the licence if the licensee proposes to add, remove or change the name of a security cleared responsible person listed in the licence. The provision also confirms that the licensee must comply with all obligations imposed directly upon the licensee under part 4.5.

Part 4.6 also enables the chief executive to determine which routes can and must not be used to carry particular quantities of security sensitive substances by road. The chief executive can also determine times when security sensitive substances may be carried and must not be carried. Determinations by the chief executive are to be in writing and are disallowable instruments. If a determination is made by the chief executive security sensitive substances can only be carried by road in accordance with the determination.

Part 4.7 Storing security sensitive substances

Part 4.7 requires a licence to be held for the storage of security sensitive substances in the ACT. **Section 435** provides that an application for a storage licence must include specified information and be accompanied by copies of the applicant's identification papers and those of anyone who is to be a responsible person for the security sensitive substance. The licence applicant will also need to specify the purpose of the storage and the address of the premises where the substance(s) are to be stored. Of significant importance is the requirement for a security plan for the proposed storage to be provided with the licence application.

In order to store security sensitive substances in the ACT, a security plan must be formulated in accordance with **section 436**. The security plan must be based on a written risk assessment addressing and identifying security risks associated with the storage of the particular substance. A security risk assessment must consider both the security risk posed and the source of that security risk. Risks to consider include theft, deliberate destruction such as arson, sabotage or contamination, and unauthorised access to the premises.

The security plan should describe how a licensee will meet the compulsory requirements and what security measures are included, but must also detail the precautions taken to ensure the security sensitive substances stored are secure. The security plan must also establish recording and reconciliation protocols, as well as procedures for reporting losses, thefts and attempted thefts.

Section 437 imposes conditions on persons storing security sensitive substances in the ACT. Licensees may only store the substance for the purpose or purposes stated in the licence, and must not allow a person to have unsupervised access to the substance unless the person is named in the licence as a security cleared responsible person. It is also an essential condition of the licence that the security plan devised must be complied with. Furthermore, the licensee must apply to the chief executive to amend the licence if the licensee proposes to add, remove or change the name of a security cleared responsible person listed in the licence. The provision also confirms that the licensee must comply with all obligations imposed directly upon the licensee under part 4.6.

Part 4.7 also requires creation of records about the name and classification of the security sensitive substance(s) stored and the date(s) of receipt, along with the name and licence details of the person from whom the substance was received. These records must be retained for a period not less than three years from the date the substance was removed from storage. Failure to comply with either requirement is a strict liability offence that has a maximum penalty of 20 penalty units.

Part 4.8 Supplying security sensitive substances

Security sensitive substances can only be supplied by a person licensed under part 4.7 to a person authorised under a licence to receive the substance after sighting the licence or a certified copy of the licence and identification papers for the person. **Section 443** provides that an application for a supply licence must include specified information and be accompanied by copies of the applicant's identification papers and those of anyone who is to be a responsible person for the security sensitive substance. The licence applicant will also need to specify the purpose of the supply, as well proposed procedures to ensure that security sensitive substances are only supplied to persons authorised to receive them.

Section 444 imposes conditions on persons supplying security sensitive substances. Licensed suppliers may only supply the substance for the purpose or purposes stated in the licence, and must not allow a person to have unsupervised access to the substance unless the person is named in the licence as a security cleared responsible person. Furthermore, the licensee must apply to the chief executive to amend the licence if the licensee proposes to add, remove or change the name of a security cleared responsible person listed in the licence. The provision also confirms that the licensee must comply with all obligations imposed directly upon the licensee under part 4.7.

Section 446 contains a strict liability offence for failing to make a record of security sensitive substances supplied under the licence, and also for failing to keep those records for at least five years. The offence has a maximum penalty of 20 penalty units.

Division 4.8.2 (Advertising of supply of security sensitive substances) contains only one provision, an offence for false or misleading statements about authority to supply sensitive substances that has a maximum penalty of 30 penalty units. The provision is similar to an offence in Division 2.8.4 of the Dangerous Substances (Explosives) Regulations 2004.

This offence is not a strict liability offence as recklessness must be shown to prove a contravention of the provision. There are six elements of this offence that must be established to for a contravention to be proved, these are:

- that the person has made a statement, either orally or in writing or in any other way,

- the statement concerns either the supply or possible supply of security sensitive substances, or the promotion of the supply or use of security sensitive substances,
- the statement was about the availability of the security sensitive substances to members of the public
- the statement is false or misleading,
- the person was reckless about whether the statement was false or misleading or omitted anything without which the statement is false or misleading, and
- the statement was made in the course of trade or commerce.

Absolute liability attaches to the last element, which excludes the application of defences, including the defence of mistake of fact to that element only. Accordingly, to establish the last element it only needs to be proved that the statement was made in the course of trade or commerce. For a conviction to be possible, however, all elements of the offence must be established, and defences such as mistake of fact can be raised to any of the other elements.

Part 4.9 Using security sensitive substances

Security sensitive substances can only be used by a person licensed under part 4.9, with the exception of an inspector or a police officer exercising a function under the Act. **Section 452** provides that an application for a user licence must include specified information and be accompanied by copies of the applicant's identification papers and those of anyone who is to be a responsible person for the security sensitive substance. The licence applicant will also need to specify the purpose of the use, as well details of where the substance is to be stored.

Section 453 imposes conditions on persons using security sensitive substances. Licensed users may only use the substance for the purpose or purposes stated in the licence, and must not allow a person to have unsupervised access to the substance unless the person is named in the licence as a security cleared responsible person. Furthermore, the licensee must apply to the chief executive to amend the licence if the licensee proposes to add, remove or change the name of a security cleared responsible person listed in the licence. The provision also confirms that the licensee must comply with all obligations imposed directly upon the licensee under Part 4.9.

If a licensee does allow an unauthorised person to use a security sensitive substance, the licensee contravenes **section 454** which carries a maximum penalty of 10 penalty units. The offence is a strict liability offence.

Section 455 contains a strict liability offence for failing to make a record of security sensitive substances used under the licence, and also for failing to keep those records for at least three years. The offence has a maximum penalty of 20 penalty units.

Part 4.10 Disposal of security sensitive substances

Part 4.10 applies exclusively to the disposal of security sensitive substances. The provisions within this part impose several conditions as licence conditions. Of particular significance is the requirement to select the method of disposal that provides the greatest degree of security possible that is appropriate for the substance.

The part contains a strict liability offence with a maximum penalty of 30 penalty units for discarding a security sensitive substance, such as throwing the substance away or dumping

the substance into a waterway. The penalty imposed reflects the seriousness and the danger to the community associated with discarding security sensitive substances.

There is also a requirement to keep records of security sensitive substances disposed of, and to retain those records for at least three years. Failure to comply with either requirement is an offence to which strict liability applies, and carries a maximum penalty of 20 penalty units. Records made must contain certain information including the date and method of disposal and the reason for the disposal.

Chapter 5 Administrative review of decisions

Chapter 9 of the Act provides for the administrative review of decisions of the Minister, the chief executive or an inspector that are prescribed in the regulations. Section 187 of the Act provides that if the decision-maker makes a reviewable decision, the decision-maker must provide written notice to persons prescribed in the regulations for the decision. Section 188 of the Act provides for the internal review of prescribed decisions.

Chapter 5 of this regulation establishes a schedule of decisions (**schedule 5**) that are reviewable, identifies the decision-maker and the persons to whom notice must given. Sections 188 to 190 of the Act also provide for the internal review of prescribed decisions. Schedule 5 sets out which decisions of inspectors are internally reviewable. Decisions by an internal reviewer, or a reviewable decision other than an internally reviewable decision can be reviewed by the administrative appeals tribunal on the application of a person whose interests are affected by the decision.

Chapter 6 Transitional

Chapter 6 contains licensing-related transitional provisions, repeal of the Dangerous Substances (General) Regulation 2004 SL2004-09, and consequential amendments to the Dangerous Substances (Explosives) Regulation 2004.

Part 6.1 modifies the Act utilising powers in chapter 14 of the Act. The Act is modified to terminate all prescribed former licences (not already terminated) which were issued under the now repealed *Dangerous Goods Act 1975* on 31 March 2005. This is the date that this regulation (with the exception of provisions identified in relation to section 2) will commence.

Section 54 of the Act explains that licences can be granted for up to three years, or a shorter period specified by the regulations. It is appropriate that people who wish to handle dangerous substances be required to reapply for a licence at specified intervals. **Part 6.2** of this regulation provides that licences issued under the Act before 1 July 2005 may not be issued for a term of more than one year. The dangerous substances regulatory regime established through the Act and regulations is complex. The maximum licence term has been limited during the bedding down period following commencement in April 2004 to enable close monitoring of the operation of the new regime and of industry compliance. This provision is only relevant to explosives licences.

Part 6.4 contains consequential amendments to the Dangerous Substances (Explosives) Regulation 2004 and some minor technical corrections. The consequential amendments apply the licensing and security requirements for chapter 4 security sensitive substances to explosives ensuring that the controls on explosives are not less stringent than those for substances like fertilizer-grade ammonium nitrate. Accordingly, Part 6.4 makes amendments

to provisions in the Explosives Regulation about licensing of manufacture, import, supply, storage, carrying and use to be consistent with chapter 4.

Schedule 1 Dangerous substances—quantity

Table 1.1 in **schedule 1** lists the placard quantity and manifest quantity thresholds for all classes, sub-classes and packing groups of dangerous substances to which the Dangerous Substances (General) Regulation applies. **Schedule 1** also contains provisions providing instruction on how to determine quantities held at the premises in packaged form, in tanks, in solid form or that are part of articles. Persons in control of premises will need to determine quantities held at the premises in order to know what obligations established through this regulation will apply to the premises.

Schedule 2 Placards

Schedule 2 contains more detailed information about the requirements of hazchem warning placards and information placards, including diagrams reflecting placard appearance and dimensions.

Schedule 3 Manifests

Schedule 3 contains more detailed information about the requirements of manifests generally, and for manifests for specific purposes, such as for dangerous substances in tanks or for dangerous substances in transit.

Schedule 4 Security sensitive substances

Dangerous substances determined to be security sensitive substances are listed in column 2 of **table 4.1**. Column 3 of the table lists the authorised purposes for which a licence to handle that particular security sensitive substance can be issued. If a purpose is not listed in Column 3 for that substance, a licence should not be approved for that purpose. For example, household use is not authorised for security sensitive ammonium nitrate as it does not appear in column 3. Similarly, security sensitive ammonium nitrate is only authorised for agricultural use if that use is commercial, and to be used by primary producers or a distribution service agency. Accordingly, use by greenkeepers or for backyard enterprises will not be authorised.

Another important component of the table is column 4 which specifies the exempt amount for carrying of particular security sensitive substances. For some substances it is appropriate to allow for carrying of small quantities where the carrying is subsidiary to another licensed activity such as use, without the need for that carrying to be licensed. For example, a primary producer licensed to use security sensitive ammonium nitrate may need to carry small quantities from a supplier to their property, or from one property to another. If no exempt amount is stated in column 4, a carrying licence is required for any carrying of that particular substance.

Not all ammonium nitrate will be licensed as security sensitive ammonium nitrate. Ammonium nitrate of dangerous goods class 1, which are explosives, are licensed as explosives under the Dangerous Substances (Explosives) Regulation 2004. Ammonium nitrate solutions are not security sensitive. Furthermore, only ammonium nitrate emulsions and mixture consisting of greater than 45% ammonium nitrate are security sensitive ammonium nitrate.

Schedule 5 Reviewable decisions

Part 5.1 sets out the decisions of the chief executive under the Act that are reviewable and the persons who must be notified of the decision. **Part 5.2** sets out the decisions of the inspectors that are internally reviewable and the persons who must be notified of the decision. **Part 5.3** sets out the decisions of the chief executive under this regulation that are reviewable and the persons who must be notified of the decision.

Dictionary

The dictionary contains further definitions of terms and concepts used in this regulation.