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DANGEROUS SUBSTANCES BILL 2003

EXPLANATORY STATEMENT

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OUTLINE

The Dangerous Substances Bill 2003 provides a statutory framework for regulating the way that dangerous goods and hazardous substances are managed, to minimise the risk these materials can pose to the health and safety of people working with these substances, the general community and the environment. The regulatory framework established by the Bill will be supported by detailed regulations that can be updated regularly to reflect industry best practice and technological advances. The move to combine the regulatory regimes for dangerous goods and hazardous substances into a single enactment has been given further impetus by recent United Nations initiatives aimed at developing the Globally Harmonised System (GHS) of Classification and Labelling of Chemicals.

The Bill is intended to complement other legislative schemes that regulate workplace safety, environmental protection, the handling of infectious or radioactive material, control of firearms and ammunition, drugs and the transportation of dangerous goods. Together, these laws will ensure that there is a comprehensive system of regulation and control for materials that can cause significant injury or damage to people, property and the environment if not properly managed.

Objects of the Bill

The objects of the Bill, set out in Chapter 2, emphasise the importance of ensuring the safe handling of dangerous substances at all stages from import or manufacture to end use. The objects of the proposed legislation emphasise the duties of care (“safety duties”) of people working with dangerous substances to take steps to minimise the risk of harm to themselves or others, property, and to the environment. The objects recognise the importance of ensuring that people are properly educated about risk minimisation procedures and that they have the skills and experience necessary to handle dangerous substances safely. The objects also recognise the importance of regulatory mechanisms, such as licensing, and authorisation and notification schemes, which ensure that people who deal with dangerous substances are properly qualified and can be held accountable for their actions.

Key terms

Chapter 2 explains important terms that are central to understanding the purpose and operation of the Bill. The term *dangerous substance* has a very specific meaning in the Bill, which includes substances classified as dangerous goods in accordance with the Australian Dangerous Goods Code; explosive substances or explosive articles covered by the Australian Explosives Code; combustible liquids within the meaning of Australian Standard 1940, and hazardous substances within the meaning of the National Occupational Health and Safety Council Approved Criteria for Classifying Hazardous Substances and its List of Designated Hazardous Substances. The Bill will not apply to infectious material (such as clinical waste), radioactive material, firearms and ammunition (other than the manufacture and transport of ammunition), the transmission, distribution and use of natural gas, and, in some circumstances, the transmission, distribution and use of LPG. These materials will continue to be regulated by other legislation, as mentioned above.

The Bill imposes safety duties on people involved in handling dangerous substances. Handling is broadly defined to cover activities relating to dangerous substances from the time a dangerous substance arrives or is manufactured in the ACT up until it is fully utilised or its disposal is complete. Storage is included in the concept of handling since the incorrect storage of dangerous goods, particularly explosives and flammable liquids, can pose very significant risks to workers, the general community and the environment.

Other important concepts discussed in Chapter 2 are *person in control*, *responsible person*, *non-commercial handling*, *correctly* (for the purposes of classifying, packing, storing, labelling and placarding dangerous substances), *hazard* and *risk*, *reasonable steps* (in relation to a risk), and *safety management system*.

Chapter 3 deals with the safety duties imposed on people involved in handling dangerous substances. The content and requirements of each safety duty depends on the type and level of involvement those people have in handling the substances. The regulations will provide greater detail on the way in which safety duties are to be discharged by people who handle or otherwise deal with dangerous substances. It is desirable that these matters be dealt with by regulation, rather than in the proposed Act, so they can be amended as needed to keep up with changes in approaches to risk management in particular industries, and in relation to particular dangerous substances. This is an area where improvements in safe handling methods are frequently made.

The safety duties imposed under the Bill are not optional. People who are subject to a safety duty must discharge that duty to the best of their ability. Part 3.2 of the Bill deals with the consequences of failing to comply with safety duties. It is an offence to fail to comply with a safety duty. The penalties for this offence may include a fine, imprisonment or both. The level of penalty to be imposed will depend on whether the failure to comply resulted in exposure to substantial risk of harm, or caused serious harm or death.

Chapter 4 deals with licences for dangerous substances. Licences will be required for different types of activities associated with dangerous substances, depending on the type of dangerous substance involved, and as specified in the regulations. For instance, there is significant potential for serious harm to the community associated with the misuse of explosives, which are a type of dangerous substance. The regulations will therefore require people to hold licences for most activities associated with handling explosives, such as manufacture, import, supply, use and possession.

Other types of dangerous substances may only require licences for particular activities associated with a dangerous substance, for instance manufacture. Licences may be required for handling activities, but only where the quantity of a dangerous substance is above a certain threshold, for instance the storage of petrol.

The Bill would establish procedures for applying for and issuing licences for the range of licences that may be required for dangerous substances. The chief executive will be responsible for considering licence applications, and all applications will be subject to two primary criteria – whether the applicant is a suitable person, and whether the applicant will be able to comply with the requirements of the Bill.

Given the inherent dangerous properties of dangerous substances, and the potential for harm to the community if dangerous substances are misused, the Bill will specify that the chief executive can consider matters such as training and experience of the applicant. The chief executive may also consider whether the applicant or a close business associate of the applicant has previously breached the Bill, or has recently been convicted on criminal charges involving violence, fraud, dishonesty or firearms, and similar matters. The close associate provisions are designed to ensure that the chief executive can examine those other people who have significant financial interests in, and control over, the applicant's business, and are modelled on similar provisions included in the *Security Industry Act 2003*.

Chapter 4 also ensures that the chief executive can continue to monitor whether licence holders remain suitable people and remain able to comply with their obligations under the Bill after a licence is issued. The provisions in chapter 4 also allow the chief executive to take disciplinary action against licence holders, including measures ranging from reprimands through to cancellation of licences and disqualification from holding licences.

Chapter 5 establishes serious offences for misuse of dangerous substances, not necessarily associated with breaches of safety duties (covered in Chapter 3). Some dangerous substances are so dangerous they will be prohibited for handling except in very limited circumstances. *Prohibited* dangerous substances will be prescribed in the regulations and will include substances such as high-grade explosives and asbestos.

Chapter 5 establishes significant penalties for activities such as manufacturing, importing, supplying, using and possessing prohibited dangerous substances without authority under a licence or the regulations. It is important to note that there will be a limited number of exemptions. For instance, there may be an exemption from the prohibitions on the manufacture and use of asbestos in a case such as an approved scientific study.

Other dangerous substances that are not prohibited but will require licences or other authorities for handling are referred to as *controlled* dangerous substances. These will include substances such as fireworks that can be used by qualified pyrotechnicians. Chapter 5 establishes offences for people who handle these substances without appropriate authorisation. These offences are subject to lower penalties than those applying to unauthorised handling of prohibited dangerous substances.

Other offences are created in Chapter 5 for failing to transport, store or dispose of dangerous substances or plant used to handle dangerous substances as required by the regulations. Other offences apply where the regulations require notification of the handling of dangerous substances, or registration of premises, plant or equipment used to handle dangerous substances, and a person fails to provide this notification or obtain this registration. The Chapter also establishes offences relating to dangerous occurrences, including where a person disturbs the site of a dangerous occurrence has happened while an investigation is underway.

Chapter 6 contains measures to promote compliance with the Bill's provisions and to protect community safety, including alternatives to criminal prosecutions under the Bill. The measures included in the Bill include compliance agreements, improvement notices, prohibition notices, enforceable undertakings and injunctions. The Bill also provides for the chief executive to obtain information from a person about suspected contraventions of the Bill by asking questions or requiring the production of documents. This chapter also allows inspectors to take samples of substances for the purposes of analysis.

Chapter 7 sets out the enforcement powers of inspectors under the Bill. These include powers to enter premises with or without consent of the person in control of premises, powers to take action to protect the health and safety of people, or to protect property or the environment from damage. Inspectors are also equipped with powers to seize things (including data and electronic equipment) that may be evidence of a breach of the Bill, power to destroy things seized or that are not safe, and powers to require people to produce licences or give their names. The Chapter also covers search warrants and return and forfeiture of seized things.

Chapter 8 gives the Minister power to make emergency orders to prevent or minimise serious harm to people, or substantial damage to property or the environment, that may be caused by a dangerous substance. An emergency order may, for instance, prohibit the handling of a particular dangerous substance if this is not already the case under the Bill or regulations, or require the publication of warnings about a particular dangerous substance. For instance, the Minister may publish a warning if a dangerous substance, such as chemical commonly used by householders was found to pose a serious risk of harm to health. The Bill also creates an offence for failure to comply with an emergency order, provides for review of emergency orders by the Supreme Court, and also requires the Territory to compensate people who suffer loss or damage as a result of an emergency order that was made on insufficient grounds.

Chapter 9 deals with the administrative review of decisions made under the Bill, for instance by the Minister, the chief executive or an inspector. Decisions are reviewable under the *Administrative Appeals Tribunal Act 1989*, although some decisions must first be subject to internal review (for instance a decision by an inspector). These decisions will be identified in the regulations.

Chapter 10 sets out procedural and evidentiary provisions for the Bill, including the criminal liability of executive officers of corporations and other unincorporated bodies that may contravene the Bill, powers for the courts to make remedial orders, costs orders, evidentiary presumptions, and admissibility of samples taken by inspectors. The chapter also provides for court-directed publicity of offences, and the publication of convictions under the Bill by the chief executive, recognising that adverse publicity can be both an effective penalty and a deterrent.

Chapter 11 sets out administration provisions including the appointment of inspectors and analysts under the Bill, and the requirement for any commercial secrets about dangerous substances obtained through the exercise of regulatory functions to be protected by Government officers.

Chapter 12 sets out regulation-making powers relating to dangerous substances.

Chapter 13 contains miscellaneous provisions, including matters such as codes of practice, determination of fees and making forms.

Chapter 14 deals with consequential amendments and contains transition provisions.

Schedule 1 contains consequential amendments to other Acts.

The Dictionary contains definitions of terms used in the Bill.

Notes on Clauses

Chapter 1 Preliminary

This chapter contains **clauses 1 to 5** of the Bill dealing with formal matters such as the name of the proposed Act, its commencement, the role of the dictionary, the role of notes and the application of the Criminal Code to offences under the Act.

Chapter 2 Important concepts

Part 2.1 Operation of Act

This part deals with the purpose and scope of the proposed Act, and its relationship to other laws. **Clause 6** sets out the purpose of the Act, so that people who use the new legislation are aware of the context in which the legislation has been enacted. In brief, the proposed Act is about protecting people, property and the environment from harm or damage by dangerous substances.

Clause 6(2) explains the purpose of the proposed Act in greater detail. The purpose includes:

- eliminating or minimising the hazards associated with dangerous substances, by identifying hazards and risks so they can be assessed and controlled and by educating people about hazards and safe use;
- allocating responsibilities to people who deal with dangerous substances; and
- regulating the way the dangerous substances are handled.

Clause 7 explains which matters are excluded from the operation of the proposed Act, to make it clear which substances are to be dealt with under this legislation and which substances will be covered by other laws. In brief, the Bill will not apply to the transmission, distribution and use of natural gas or LPG, ammunition covered by the *Firearms Act 1996*, infectious substances, radioactive substances and other matters prescribed by regulation.

Clause 8 explains the duties arising under the proposed Act operate in addition to duties that people may have under other enactments. A duty or power under another Act can operate in relation to dangerous substances only in so far as it is consistent with the Bill. A duty or power under another enactment will not be regarded as inconsistent if it can operate concurrently with a duty imposed by the Bill. People who deal with dangerous substances will therefore need to ensure that they are familiar with all relevant legislation and the duties imposed on them under those laws.

Clause 9 explains the relationship between the regulations and approved codes of practices and other incorporated documents. The purpose of this clause is to make it clear that the regulations will prevail over approved codes of practice or incorporated documents, to the extent that they cannot operate concurrently.

Part 2.2 Important terms

This Part explains terms and concepts that are critical to the operation of the proposed Act.

Clause 10 explains the concept of dangerous substance. The definition refers to classifications of materials under nationally agreed standards including the Australian Explosives Code, Australian Dangerous Goods Code, Australian Standard 1940, the Approved Criteria for Classifying Hazardous Substances approved by the National Occupational Health and Safety Commission, and the National Occupational Health and Safety Commission List of Designated Hazardous Substances. The definition includes powers to designate something as a dangerous substance under the regulations or by a written Ministerial declaration. These powers will ensure that materials can be classified quickly as they are developed, or when dangerous attributes of existing substances become known.

Clause 11 explains the concept of handling dangerous substances. Given that the long title of the proposed Act is “an Act in relation to the handling of dangerous substances and for other purposes”, this concept is central to understanding the operation of the Bill. Most of the safety duties and the regulatory schemes established under the Bill for licensing, authorising and notifying various activities are aimed at people involved in handling dangerous substances.

The concept of *handling* is broadly defined so that it covers most, if not all, of the activities through which a dangerous substance is likely to interact with people, property or the environment in circumstances that give rise to some risk of harm or damage.

The concept of handling goes beyond direct physical involvement with dangerous substances. For example, importing a dangerous substance comes within the definition of handling. The unauthorised import of dangerous substances, particularly explosives or flammable materials, poses particular risks of harm.

Clause 12 defines the concept of *non-commercial* handling of dangerous substances. This definition is included to distinguish between handling of a dangerous substance, for example a poison used as a weedkiller by people in their own gardens, and handling that occurs as part of trade or commerce.

Clause 13 explains the concept of *correctly* classified for a dangerous substance. A substance will be correctly classified if it is classified in accordance with any applicable regulations, declarations or incorporated documents. In this way, nationally and internationally agreed classification standards for dangerous substances can be adopted into the regulatory scheme established by the proposed Act without having to amend the principal Act every time these classification standards are amended.

Clause 14 defines the concept of *correctly* packed, labelled, stored and placarded dangerous substances. Packing, labelling, storing and placarding are included within the concept of handling in **clause 11**. Properly labelled or placarded dangerous substances can alert people to hazards and provide critical information about safe handling. Conversely, incorrectly labelled or placarded dangerous substances can

create a significant risk. **Clause 14** anticipates that regulations and incorporated documents will specify how dangerous substances must be packed, labelled, stored and placarded to provide detailed guidance to people who handle dangerous substances.

Clause 15 defines the concepts of *hazard* and *risk*. These concepts are relevant to the safety duties imposed on people who handle dangerous substances as those duties may require that hazards and risks be identified, and reduced or avoided.

Clause 16 explains the concept of *reasonable steps* in relation to a risk. This definition is included to support provisions in the Bill under which people are required to take reasonable steps to eliminate a hazard or minimise a risk relating to dangerous substances. Its effect is to provide clear guidance to people using the legislation about what sort of factors must be considered in deciding whether a particular course of action is justifiable. The definition includes a power to make regulations about the matters that are relevant to deciding whether something is a reasonable step in relation to a risk.

Clause 17 explains the concept of *person in control*. This term is relevant to identifying the people on whom safety duties are imposed under the Bill. A person in control can include a natural person or corporation who has control, to any extent, of handling a dangerous substance, of premises where dangerous substances are handled, or of plant and systems used in handling dangerous substances.

Clause 18 explains that a *responsible person* includes people who control the handling dangerous substances, people who control the premises where dangerous substances are handled, or people who control the plant or a system at the premises. The intention of these definitions is to ensure that all people with the ability to influence the way dangerous substances are managed can be identified and are properly accountable for their actions.

Clause 19 defines the concept of a *safety management system*. As several of the safety duties relate to safety management systems, it is appropriate for this concept to be defined to assist people who have the safety duties to comply with those duties. In essence, a safety management system requires the identification of the hazards related to handling a substance, assessment of the risks, control or minimisation of the risks arising from the identified hazards, and compliance with any prescribed requirements. This clause also explains how to identify and assess hazards and risks, and the sort of measures that must be taken to control or minimise those risks as part of a safety management system.

Part 2.3 **Complying with Act**

Clause 20 explains that people may be subject to more than one duty under the Bill. These duties can be general duties that apply to everyone who handles dangerous substances, or specific duties directed at particular types of actions involving dangerous substances.

Clause 21 makes it clear that a safety duty can apply to more than one person, meaning that everybody handling a dangerous substance must discharge their safety

duties. A person involved in handling dangerous substances cannot rely on someone else doing the right thing. However, if the legislation requires or allows more than one person to do something, the duty is discharged so long as one of them does that thing.

Clause 22 explains that codes of practice and incorporated documents are relevant in deciding whether someone has complied with a safety duty. It is intended that codes of practice and incorporated documents will contain information about the way in which safety duties are to be discharged and provide guidance to people working with dangerous substances about safe practices and risk minimisation procedures.

Chapter 3 Safety duties for dangerous substances

This chapter of the Bill deals with the safety duties that apply to people involved with dangerous substances. It sets out the content of the duties and explains the consequences of failing to comply with a safety duty.

Part 3.1 Safety duties

This Part sets out the safety duties that apply to people who deal with dangerous substances.

Division 3.1.1 explains the safety duties that apply to people handling dangerous substances.

Clause 23 imposes a general safety duty on everybody involved in handling a dangerous substance. This duty applies whether or not the person is handling dangerous substances in the course of trade or commerce.

Division 3.1.2 explains the safety duties that apply to people who handle dangerous substances in trade or commerce.

Clause 24 makes it clear that this division applies only to the commercial handling of dangerous substances.

Clause 25 requires people in control of the manufacture, import or supply of a dangerous substance to take all reasonable steps to ensure that safety management systems are in place, kept up-to-date, are complied with and the compliance with safety management systems is properly documented.

Clause 26 requires manufacturers to take all reasonable steps to ensure that dangerous substances are correctly classified once they are manufactured and that substances are in a safe condition for handling. Manufacturers who pack substances must take all reasonable steps to ensure that they are safely packed and correctly labelled. Manufacturers who store substances have to take all reasonable steps to ensure the safe storage of the substance and the proper placarding of the storage facility where dangerous substances are kept. Finally, manufacturers must take all reasonable steps to ensure that safety information is prepared and kept up-to-date, and that the safety information is supplied as required under the regulations.

Clause 27 and **clause 28** set out the safety duties of importers and suppliers, respectively, of dangerous substances. These duties broadly mirror those that apply to manufacturers, and relate to the classification, storage, labelling and packing of imported dangerous substances and safety information about those substances.

Division 3.1.3 explains the safety duties that apply to premises where dangerous substances are handled in trade or commerce.

Clause 29 makes it clear that this division applies only to the commercial handling of a dangerous substance.

Clause 30 imposes a general safety duty on everyone at premises where dangerous substances are handled in trade or commerce. This duty requires people to take all reasonable steps and minimise the risks involved in handling substances as far as reasonably practicable.

Clause 31 explains the safety duties of people in control of premises. These duties relate to matters such as safety management systems, the safe disposal of items from the premises and the thorough cleaning of premises or plant to remove traces of dangerous substances or to otherwise make them safe.

Division 3.1.4 sets out the safety duties of people involved with plant or systems used for handling dangerous substances in trade or commerce.

Clause 32 explains that this division, other than **clause 33**, applies only to the commercial handling of dangerous substances.

Clause 33 imposes a general safety duty on people involved with plant or systems used to handle dangerous substances, to take all reasonable steps to minimise the risks resulting from their activities. The purpose of this clause is to ensure that people who design, manufacture, import, supply, install, commission, operate, maintain, repair, decommission, dismantle or dispose of plant or systems for handling dangerous substances take all reasonable steps to ensure that their actions reduce the risk of harm posed by the handling of the dangerous substance.

Clause 34 imposes additional safety duties on people in control of plant and systems. These people are responsible for ensuring that safety management systems are in place, kept up-to-date, are complied with, and that such compliance is properly documented. This clause gives particular guidance on the content of the safety duty in relation to the installation, operation, maintenance, repair and testing of plant and systems, how hazards and defects with plant and systems are to be addressed once the person becomes aware of them, and how plant and systems are to be cleaned or otherwise made safe.

Clause 35 sets out the safety duties that apply to people in control of designing, manufacturing, importing and supplying plants and systems that are used for handling dangerous substances. The purpose of this duty is to ensure that these people take all reasonable steps to eliminate or minimise the risks associated with the proper handling of dangerous substances by the plant or system.

Under **clause 36**, similar safety duties to those contained in **clause 35** apply to people who are in control of installing plant or systems.

Division 3.1.5 deals with obligations to report dangerous occurrences.

Clause 37 explains that this division applies only to the commercial handling of dangerous substances.

The concept of dangerous occurrence is defined in **clause 38**.

Under **clause 39**, 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.

Division 3.1.6 deals with miscellaneous matters.

Clause 40 makes it clear that a duty imposed by one of the provisions in this part of the Bill does not limit the duties that may apply under other provisions in this part. The duties are intended to operate concurrently.

Part 3.2 Failure to comply with safety duties

Clause 41 contains a definition of safety duty for the purposes of this part of the Bill.

Clause 42 explains that it is an offence to fail to comply with a safety duty. This is a strict liability offence, which does not require that the alleged offender intended not to comply with the safety duty. This offence is subject to lower penalties than offences where it can be demonstrated that a person intentionally, recklessly or negligently failed to comply with a safety duty.

Subclause 42(2) provides that absolute liability applies to the requirement to comply with a safety duty under subclause 42(1)(a). As absolute liability applies to the requirement to comply with a safety duty, the defence of mistake of fact does not apply to this requirement. Therefore, the offender's ignorance about the existence of the duty is not relevant for the purposes of the offence, nor is it relevant that the offender was mistaken about whether he or she owed the relevant duty. However, subclause 42(2) does not render the whole of the offence an absolute liability offence. It simply applies absolute liability to the one particular element of the offence. Accordingly, for clause 42, the prosecution need only establish the existence of the duty in subclause 42(1)(a), and that the person failed to comply with that duty in subclause 42(1)(b), or took reasonable steps to comply.

Clause 43 provides that it is an offence if the failure to comply with a safety duty means that that a person has been exposed to a substantial risk of death or serious harm because of the failure to comply with the duty. The mental elements of the

offence include either recklessness or negligence about whether the failure would expose the person to that risk.

Subclause 43(2) provides that absolute liability applies to the requirement to comply with a safety duty under subclause 43(1)(a). As absolute liability applies to the requirement to comply with a safety duty, the defence of mistake of fact does not apply to this requirement. Therefore, the offender's ignorance about the existence of the duty is not relevant for the purposes of the offence, nor is it relevant that the offender was mistaken about whether he or she owed the relevant duty. However, subclause 43(2) does not render the whole of the offence an absolute liability offence. It simply applies absolute liability to the one particular element of the offence.

Clause 44 is an extremely serious offence, where the physical elements of the offence include the circumstance that the failure to comply with the duty resulted in death or serious harm to a person, and the mental elements of the offence include either recklessness or negligence about whether the failure would cause death or serious harm to a person. It carries a maximum penalty of 2000 penalty units, imprisonment for 7 years or both.

Subclause 44(2) provides that absolute liability applies to the requirement to comply with a safety duty under subclause 44(1)(a). As absolute liability applies to the requirement to comply with a safety duty, the defence of mistake of fact does not apply to this requirement. Therefore, the offender's ignorance about the existence of the duty is not relevant for the purposes of the offence, nor is it relevant that the offender was mistaken about whether he or she owed the relevant duty. However, subclause 44(2) does not render the whole of the offence an absolute liability offence. It simply applies absolute liability to the one particular element of the offence.

Clause 45 is an offence where the physical elements of the offence include the circumstance that the failure to comply with the duty exposes property or the environment to a risk of substantial damage, and the mental elements include negligence or recklessness about that risk.

Subclause 45(2) provides that absolute liability applies to the requirement to comply with a safety duty under subclause 45(1)(a). As absolute liability applies to the requirement to comply with a safety duty, the defence of mistake of fact does not apply to this requirement. Therefore, the offender's ignorance about the existence of the duty is not relevant for the purposes of the offence, nor is it relevant that the offender was mistaken about whether he or she owed the relevant duty. However, subclause 45(2) does not render the whole of the offence an absolute liability offence. It simply applies absolute liability to the one particular element of the offence.

Clause 46 is an offence where the physical elements of the effects include the circumstance that the failure to comply with the duty has resulted in substantial damage to property or the environment, and the mental elements include negligence or recklessness about whether the failure would cause substantial damage to property or the environment.

Subclause 46(2) provides that absolute liability applies to the requirement to comply with a safety duty under subclause 46(1)(a). As absolute liability applies to the

requirement to comply with a safety duty, the defence of mistake of fact does not apply to this requirement. Therefore, the offender's ignorance about the existence of the duty is not relevant for the purposes of the offence, nor is it relevant that the offender was mistaken about whether he or she owed the relevant duty. However, subclause 46(2) does not render the whole of the offence an absolute liability offence. It simply applies absolute liability to the one particular element of the offence.

Clause 47 makes it clear that where a person has been charged with an offence, if the trier of fact (this is the jury, or the magistrate/judge if there is no jury) is not satisfied beyond a reasonable doubt that the person is guilty of the offence charged, they may find the defendant guilty of an alternative offence, if satisfied beyond reasonable doubt that the defendant has committed the alternative offence. The alternative offences are set out in the table of alternative verdicts in **clause 47(3)**.

Chapter 4 Licences for dangerous substances

This chapter establishes a licensing system for people who handle dangerous substances. The purpose of the licence scheme under the Bill, as with other licensing systems, is to ensure that the people who are licensed to handle dangerous substances are properly qualified and otherwise suitable to be issued a licence. The ability to suspend, cancel or impose conditions on a licence is a valuable regulatory tool.

Part 4.1 contains general provisions dealing with licences.

Clause 48 contains a definition of close associate, which is a concept that is used in **clause 49**.

Clause 49 sets out the criteria for determining whether a person is suitable to hold a licence. In summary, these criteria focus on matters such as:

- knowledge, training and experience in handling dangerous substances;
- general honesty and integrity;
- previous disciplinary and/or compliance history; and
- any history of criminal involvement or violence

in relation to the applicant for the licence and the applicant's close associates.

Clause 50 deals with the formal requirements for licence applications. The detailed requirements for licence applications will be set out in the regulations and in any approved forms for making applications. There is no obligation to consider applications that do not comply with the formal requirements. It is important that all relevant information must be included with licence applications to ensure that licences to handle dangerous substances are only issued once a full and proper assessment of the person's suitability to hold a licence and ability to comply with the Act is completed.

Clause 51 ensures that the chief executive can obtain information relevant to making a decision about an application for a licence, by asking applicants, licensees or others to provide relevant information. This information can include information or documents in the possession of a third party, or access to financial records. Until the

person complies with the request for further information, there is no obligation to decide the application.

Part 4.2 contains provisions dealing with the issue and amendment of licences.

Clause 52 sets out the way that the chief executive must consider and decide applications for licences. A licence will be granted if the chief executive is satisfied that the applicant is suitable to hold the licence and can comply with the Act. The chief executive is required to refuse to issue a licence if he is not satisfied about these matters.

Clause 53 explains that licences can be made subject to conditions, which can either be set by the chief executive or imposed under the regulations or both. The purpose of including a power to impose conditions on a licence is to enable regulatory authorities to have greater control over the ways in which certain activities can be carried out under the licence.

Clause 54 explains that licences can be granted for up to three years, or a shorter period specified by the regulations. It is appropriate that the suitability of people to hold licences is reviewed regularly. This clause ensures that people who wish to handle dangerous substances are required to reapply for a licence at least every three years.

Clause 55 makes it clear that a licence granted to one person cannot be transferred to another person. This provision is included to ensure that regulatory authorities retain control over the people who hold licences.

Clause 56 lists the matters that must be set out in the licence.

Clause 57 requires a licensee to inform the chief executive of changes to particulars recorded in a licence, in an application for the licence or in an application to amend a licence. The purpose of this requirement is to ensure that the regulatory authorities are informed of changes that have the capacity to affect a licensee's handling of dangerous substances.

Clause 58 allows a licence holder (licensee) to seek an amendment to a licence, such as changing one of the conditions that applies to the licence. This provision could be used, for example, if a licence holder has subsequently gained a further qualification or completed further training in handling dangerous substances and wishes to be authorised to undertake a greater range of activities.

Clause 59 allows the chief executive, on his or her own initiative, to amend a licence to impose a condition. This power could be used, for example, if new information about risks associated with handling a dangerous substance becomes available after a licence has been granted and it is important to impose a new condition to reflect the new information.

Clause 60 deals with the issuing of replacement licences where they have been lost, stolen or destroyed.

Clause 61 provides a mechanism whereby a licensee can surrender a licence to the chief executive. This mechanism could be used, for example, where the licensee decides to retire or move interstate before his or her licence expires.

Clause 62 is related to **clause 57** and gives the chief executive the power to obtain further information about a change in particulars, irrespective of whether the change has been notified, so that a decision can be made about whether the licensee should continue to hold the licence. If the licensee is no longer a suitable person or able to comply with the Act, the chief executive can take disciplinary action under **part 4.4**.

Part 4.3 deals with offences relating to licences.

Clause 63 contains a strict liability offence of failing to comply with a licence condition, regardless of whether any harm is caused by that failure.

Clause 64 explains that it is an offence not to return a licence to the chief executive as soon as practicable, but within 7 days, where the licence is amended, suspended or cancelled.

Clause 65 makes it an offence to pretend to hold a licence. It is also an offence to pretend to be authorised to handle a dangerous substance under a licence.

Clause 66 provides that it is an offence for a person to allow someone else to use the first person's licence. The purpose of this provision is to ensure that people do not allow their licences to be used by unauthorised people and to ensure that only properly qualified people have access to licences.

Part 4.4 contains provisions dealing with disciplinary action against licensees.

Clause 67 explains that the chief executive can initiate disciplinary action against a current licensee, on the basis that the chief executive believes the person is no longer suitable to hold a licence, or that there has been a failure to comply with the legislation. The chief executive can also initiate disciplinary action against a former licensee, on the basis that he or she failed to comply with the Act. It is possible to take action under this clause even if a person has not been convicted of an offence under the proposed Act.

Clause 68 describes the process to be followed by the chief executive when he or she proposes to take disciplinary action. These processes are designed to ensure that a current or former licensee against whom the disciplinary action is proposed is given proper notice of the proposed action and allowed to give a written response before a decision is taken. This clause also details the kinds of disciplinary action that may be taken against a current or former licensee. The most serious sanctions include cancelling a licence and disqualifying a person from applying for another licence.

Clause 69 explains that when a licensee is given a disciplinary notice, the chief executive can also give the licensee an immediate suspension notice, the effect of which is to suspend the licensee's licence pending resolution of the disciplinary action. The grounds for issuing an immediate suspension notice are set out in **clause 69(3)**, and make it clear that an immediate suspension notice can only be

issued if the circumstances surrounding the disciplinary action are taken into account, and it is in the public interest to suspend the licence while the disciplinary action proceeds.

Clause 70 explains the effect of suspension. A suspended licence cannot authorise the carrying on of any activity covered by the licence, for the duration of the suspension, and the licensee is taken not to hold a licence and to be disqualified from applying for a licence. If a licence holder is authorised to carry on more than one handling activity under a single licence, this provision explains that the licence can be suspended as it relates to a particular handling activity only, and continue to permit the licence holder to carry on other activities.

Clause 71 is a procedural provision that sets out the actions that the chief executive must take when a licence is amended, suspended or cancelled following disciplinary action.

Clause 72 allows the chief executive to publish information about disciplinary decisions. The purpose of this provision is to ensure that there is transparency about disciplinary action and that members of the public know about the disciplinary status of people with whom they may be proposing to do business. Information about disciplinary action cannot be published until any appeals or reviews of the decision about the disciplinary action are complete.

Chapter 5 Other serious offences

Part 5.1 deals with other serious offences relating to prohibited and controlled dangerous substances. The purpose of these offences is to ensure that the unauthorised handling of prohibited or controlled dangerous substances can be dealt with strictly, and to deter people from engaging in the unauthorised handling of prohibited or controlled dangerous substances. Given the potential risk to people, property and the environment from handling prohibited or controlled dangerous substances, it is desirable to ensure so far as is possible that these substances are handled only by those people who are properly authorised to do so.

Clause 73 defines terms and concepts used in this chapter of the Bill.

Clause 74 deals with offences relating to the unauthorised manufacture of a prohibited or controlled dangerous substance.

Clause 75 deals with offences relating to the unauthorised import of a prohibited or controlled dangerous substance.

Clause 76 deals with offences relating to the unauthorised supply of a prohibited or controlled dangerous substance. It contains an offence dealing with the supply of a prohibited or controlled dangerous substance to an unauthorised person, being reckless as to whether or not that person is authorised to possess such a substance. This offence requires people who supply dangerous substances to exercise diligence to ensure that the people to whom they are supplying the substance are duly authorised to possess them.

Clause 77 deals with offences relating to the unauthorised possession of a prohibited or controlled dangerous substance.

Clause 78 deals with offences relating to the unauthorised storage of a controlled dangerous substance. This is a strict liability offence, as people will be required to comply with regulations about specific storage requirements for particular dangerous substances.

Clause 79 deals with offences relating to the unauthorised use of a prohibited or controlled dangerous substance.

Clause 80 deals with offences relating to the unauthorised carrying of a dangerous substance. This is a strict liability offence, as people will be required to comply with regulations about specific carriage requirements for particular dangerous substances.

Clause 81 deals with offences relating to the unauthorised disposal of dangerous substances, plant and systems. This is a strict liability offence, as people will be required to comply with regulations about specific disposal requirements for particular dangerous substances, plant or systems.

Clause 82 deals with offences relating to the unauthorised handling of dangerous substances. This is a strict liability offence, as it is important to ensure that where licences are required under the regulations for handling particular dangerous substances, people do not handle those substances without a licence.

Clause 83 makes it an offence not to notify the chief executive if the regulations require that the handling of a dangerous substance must be notified to the chief executive. This is a strict liability offence.

Clause 84 makes it an offence to fail to register premises, plant or systems if the regulations require the premises, plant, or systems to be registered or notified. This is a strict liability offence.

Part 5.2 deals with preserving sites where dangerous occurrences have occurred, and imposes obligations on people in control of premises to ensure that sites are properly secured.

Clause 85 contains definitions that are relevant to this part of the Bill. In particular, it explains that an authorised officer can be an inspector appointed under the legislation (a police officer is an inspector for the purposes of the legislation); a person acting under the direction of an inspector; a person giving emergency medical assistance to an injured person; or a member of the ambulance service or fire service. This clause also defines site and site preservation period.

Clause 86 imposes an obligation on a person in control of premises to preserve the site where a dangerous occurrence took place. It is a strict liability offence not to preserve the site of a dangerous occurrence.

Clause 87 makes it a strict liability offence to interfere with the site of a dangerous occurrence before the site preservation period has expired. This clause does not apply

to actions by authorised officers that are done in order to secure the site, to give emergency medical assistance, to rescue or remove injured people, or to investigate the dangerous occurrence.

Chapter 6 **Compliance measures**

Chapter 6 includes measures to ensure that people comply with their obligations under the Act. A wide range of compliance measures are proposed, from voluntary compliance agreements, to court-issued injunctions. This is appropriate given the range of dangerous substances, and varying hazards and risks posed by different substances, and the range of circumstances in which dangerous substances are used in the community.

Part 6.1 deals with requirements to provide information and documents to the chief executive, to ensure compliance with the proposed Act. The purpose is to ensure that the chief executive can obtain information to determine whether there is compliance with the proposed Act and what enforcement action, if any, may be necessary to ensure that people who handle dangerous substances do so in accordance with the legislation.

Clause 88 provides that the chief executive can obtain information from people where the chief executive believes on reasonable grounds that a person may have contravened the Bill. The chief executive can require them to answer questions and produce documents. The purpose of a request under this clause is to enable the chief executive to determine whether a person has complied with the legislation.

Clause 89 explains that where a person is required to produce a document, but is not required to answer questions, a person can discharge his or her obligation by producing the documents to the chief executive before he or she is due to attend before the chief executive.

Clause 90 makes it a strict liability offence to fail to attend before the chief executive to answer questions or to produce a document. This clause is necessary to ensure that people comply with requests from the chief executive. Note that under **clause 88**, a person can only be required to attend before the chief executive at a reasonable time.

Clause 91 contains offences related to appearances before the chief executive. Under this clause, it is an offence to fail to answer a question, or to fail to stay at the meeting with the chief executive as reasonably required by the chief executive. This is to ensure that people cannot avoid their obligations to provide information to the chief executive by attending and then refusing to answer any questions, or by leaving before the chief executive can ask all of the proposed questions.

Clause 92 deals with the privilege against selfincrimination and exposure to civil liability of people who have been required to answer questions and produce documents to an inspector. The effect of this clause is that common law privileges against selfincrimination and exposure to the imposition of a civil penalty do not apply to allow a person to refuse to answer questions or produce documents. However, any information, document or other thing obtained under this part of the Bill cannot be used against the person in civil or criminal proceedings (apart from

criminal proceedings under this part of the Bill or provisions in the *Crimes Act 1900* dealing with false swearing). **Clause 88** provides derivative use immunity to people required to answer questions, because it protects information, documents or things obtained both directly and indirectly.

Part 6.2 deals with compliance agreements. These are agreements entered into between an inspector and a responsible person (defined in **clause 18** and referred to in this part of the Bill as a relevant responsible person) where the inspector has reasonable grounds to believe that a contravention of the legislation has occurred, is occurring or may occur. A compliance agreement is a useful mechanism to rectify potentially dangerous situations in a cooperative fashion without resorting to criminal sanctions.

Clause 93 contains definitions of terms used in this part of the Bill.

Clause 94 explains the circumstances in which an inspector may seek to enter into a compliance agreement with a relevant responsible person. It also sets out the matters that the compliance agreement must contain, including the measures that the relevant responsible person or anybody else is to take in order to make sure there is effective compliance with the legislation.

Clause 95 explains when a compliance agreement comes into force, and when it expires.

Clause 96 puts beyond any doubt that a compliance agreement is not an admission of fault by the relevant responsible person. This clause also makes it clear that evidence that a compliance agreement has been made, or evidence about the matters it contains, is not admissible in legal proceedings or disciplinary action relating to the alleged contravention of the legislation that gave rise to the compliance agreement. The purpose of this provision is to ensure that people are not deterred from entering into compliance agreements because of a fear that entry into such an agreement could be used against them in later proceedings. This approach is intended to ensure that the Territory authorities can work cooperatively with businesses to identify potentially risky situations, and develop strategies to reduce risk and prevent harm.

Clause 97 explains that it is a strict liability offence if a relevant responsible person fails to inform people affected by the compliance agreement about the terms of the agreement. The relevant responsible person must inform such people affected that the agreement has been entered into, give a copy of the agreement to other affected people in control, and display a copy of the agreement in a prominent place at the premises affected by the agreement. The purpose of this offence is to ensure that a relevant responsible person makes sure that the existence and contents of a compliance agreement are brought to the attention of all people working with dangerous substances, in order to alert them to the potentially hazardous situation and to ensure that they take any necessary remedial action.

Clause 98 makes it a strict liability offence to move, alter, damage, deface or cover a copy of a compliance agreement that has been displayed in the premises to which the compliance agreement relates. This provision recognises the importance of ensuring

that people in premises covered by a compliance agreement have ready access to documentation setting out the obligations under that agreement.

Part 6.3 deals with improvement notices. An improvement notice is another useful alternative to criminal proceedings, and provides a mechanism for ensuring future compliance with the Bill by providing the person to whom it is given specific details about the steps that need to be taken in order to comply with the legislation. Improvement notices are another way that the Bill allows regulatory authorities to optimise safety without resorting to criminal sanctions.

Clause 99 contains definitions relevant to part 6.3 of the Bill.

Clause 100 deals with giving improvement notices to responsible people. An improvement notice can be given if an inspector believes, on reasonable grounds, that a person has contravened, is contravening, or is likely to contravene the legislation. In these circumstances, the purpose of serving an improvement notice is to ensure that the contravention is not repeated, does not continue or does not occur.

Clause 101 sets out the matters that an improvement notice can cover, and the things that a notice can require the person to do. The notice must also explain why the inspector believes the notice is necessary, and how long the person is given to comply with the improvement notice.

Clause 102 explains that the period for compliance can be extended with the concurrence of the inspector, or at the inspector's own initiative, before the time limit originally set by the improvement notice has expired. This means that the person to whom the improvement notice was given cannot wait until after the compliance period has expired before seeking an extension.

Clause 103 contains offences relating to informing people about improvement notices. The purpose of this provision is to ensure that responsible people make sure that everyone who is affected by a notice is informed about the notice, so that they can discharge their safety duties and otherwise comply with the legislation. These are strict liability offences.

Under **clause 104**, it is a strict liability offence to remove, alter, damage or deface an improvement notice or a copy of an improvement notice that has been displayed in compliance with **clause 103**.

Clause 105 provides further guidance on the scope of improvement notices, and makes it clear that an improvement notice can apply to premises, plant or systems, or the way that a particular dangerous substances must be handled.

Clause 106 provides that an inspector can revoke an improvement notice when he or she is satisfied that the relevant responsible person has complied (or otherwise ensured compliance) with the notice.

Clause 107 makes it an offence to fail to comply with an improvement notice. As there are potentially severe consequences in terms of harm to people or damage to

property or the environment if the person does not comply with the notice, this is a strict liability offence.

Part 6.4 deals with prohibition notices. Prohibition notices are a mechanism that can be used by inspectors to ensure compliance with the legislation where there may be risks to health, safety, property or the environment. Prohibition notices have serious consequences and could, for example, stop work indefinitely at premises where a breach of the proposed Act is resulting in a serious risk to health or safety, or to property or the environment.

Clause 108 contains definitions for this part of the Bill.

Clause 109 provides that an inspector can issue a prohibition notice to a responsible person. A prohibition notice can be served where an inspector believes that there may be a contravention of the legislation, the order is necessary to prevent or minimise serious harm or substantial damage, to allow inspection or other monitoring, or to allow for the investigation of an accident or another incident involving dangerous substances.

Clause 110 sets out the matters that a prohibition notice can contain, including the measures that must be taken to ensure compliance with the legislation and the right of the responsible person to seek reinspection of the premises.

Clause 111 explains that if a prohibition notice states a time for inspecting, testing monitoring or investigating something, the inspector can extend that time on their own initiative or at the request of the responsible person, providing the extension is sought before the time limit expires.

Clause 112 provides that it is a strict liability offence not to tell others at the premises about the notice and steps that need to be taken under the notice, or to fail to display a copy of the notice in a prominent place at the premises.

Clause 113 makes it a strict liability offence to remove, alter, damage, deface or cover a copy of a prohibition notice displayed at premises.

Clause 114 provides further detail about the scope of prohibition notices, including the actions or matters that a prohibition notice can cover.

Clause 115 describes when a prohibition notice ceases to have effect.

Clause 116 enables a responsible person subject to a prohibition notice to ask the chief executive for the situation or circumstance that caused the notice to be given to be reinspected, with a view to revoking the prohibition notice.

Clause 117 explains that a prohibition notice can be revoked following reinspection if the inspector is satisfied that there are no grounds for the prohibition notice to continue, such as if there has been compliance with the notice. Furthermore, the provision contains a default revocation if reinspection does not occur within two business days after the request for reinspection is received. However, if the

person who requested the reinspection is in any way responsible for the delay, the default period does not apply.

Clause 118 deals with when prohibition notices that were issued to allow inspection, testing or monitoring or to allow the investigation of an accident or incident end. For prohibition notices issued for these purposes, the notice ends at the end of the period stated in the notice, or if the period has been extended, at the end of the extension.

Clause 119 establishes an offence for a person in charge who fails to comply with a prohibition notice. As there could be very serious safety consequences as a result of not complying with a prohibition notice, this is a strict liability offence. However, it should be noted that an offence is only committed if a person fails to take all reasonable steps to comply with a prohibition notice.

Clauses 120 and 121 create a right for people who are bound by a prohibition notice and suffer loss or expense as a consequence to seek compensation, if there were insufficient grounds for the prohibition notice. Applications for compensation are made to the Minister, who must consider applications and provide reasons for any decision about the application. If an application for compensation is not decided within 28 days, the Minister is deemed to have refused the application. It should be noted that applicants who are aggrieved by a decision under this section have judicial review rights under the *Administrative Decisions (Judicial Review) Act 1989*.

Part 6.5 contains provisions dealing with enforceable safety undertakings. Safety undertakings are another mechanism for ensuring compliance with the legislation without resorting to prosecution for criminal offences. Safety undertakings oblige a person to fulfil assurances that he or she makes about future behaviour in relation to dangerous substances.

Clause 122 contains definitions for part 6.5.

Clause 123 sets out the process for making safety undertakings where the chief executive has alleged that there has been a contravention of the proposed Act. A person can give the chief executive a written undertaking to comply with the legislation in relation to a dangerous substance. This undertaking is the safety undertaking. A safety undertaking must set out the details of the alleged contravention and one or more undertakings that relate to the alleged contravention.

Clause 124 explains that if the chief executive decides to accept a safety undertaking, he or she must give a written notice of that acceptance to the person who made the undertaking.

Clause 125 describes how a safety undertaking can be amended, and how the person who made the undertaking may withdraw from it if the chief executive agrees.

Clause 126 explains when an enforceable undertaking commences, and when it ends.

Clause 127 makes it clear that a safety undertaking is not an admission of fault.

Clause 128 explains what happens if an enforceable safety undertaking is contravened. In such cases, the chief executive can apply for a court order to require the person to comply with the undertaking (or to ensure that it is complied with). An application under this clause is made to the Magistrates Court. The court can also order the responsible person to pay an amount that represents the value of the benefit derived from the contravention of the undertaking, or to compensate someone for loss or damage resulting from the contravention of the undertaking. It is a strict liability offence not to take reasonable steps to comply with an order made by the court under this clause.

Part 6.6 contains powers to seek injunctions to restrain a contravention of the legislation. The purpose of this part is to provide a quick, legally enforceable mechanism to prevent conduct that would amount to a breach of the proposed Act.

Clause 129 allows any interested person to apply to the Magistrates Court for an injunction to restrain a person from contravening the legislation (this can include an injunction that stops a person from doing something or an injunction that requires a person to do something). It is not necessary for the court to be satisfied that there is a likelihood of harm to people, property or the environment in order to grant an injunction under this clause. Likewise, the court need not be satisfied that there is a breach of the legislation, or that such a breach is likely. The Magistrates Court can grant an interim injunction while it decides whether or not to grant a permanent injunction under this clause.

Clause 130 explains that the Magistrates Court can enforce interim and permanent injunctions made under this part of the legislation.

Clause 131 ensures the Magistrates Court has power to amend or discharge injunctions that it makes under this part.

Clause 132 makes it clear that when the chief executive applies for an injunction to restrain a breach of the legislation, the chief executive cannot be required by the court to give an undertaking about costs or damages. This clause also allows the chief executive to make an undertaking as to costs or damages if another interested person, apart from the chief executive, would be required to give such an undertaking in relation to an application for an injunction.

Clause 133 makes it clear that the powers given to the Magistrates Court under this part do not affect any of that Court's other powers. This clause also makes it clear that an application for an injunction can be made without requiring the applicant to give notice to the person against whom the injunction is sought.

Part 6.7 contains powers dealing with taking samples and analysing samples from premises where dangerous substances are handled. The purpose of this part is to ensure that inspectors are able to obtain access to material for analysis.

Clause 134 removes any doubt that an inspector can buy a sample of the dangerous substance from the person involved in handling dangerous substances so that it can be analysed for the purposes of routine monitoring. In such cases, the inspector is not required to follow the process for obtaining samples under this part of the legislation.

Clause 135 explains the procedure to be followed when an inspector wishes to take a sample from premises where a dangerous substance is handled. It obliges inspectors to disclose the inspector's intention to have the sample analysed.

Clause 136 deals with payment for samples taken by inspectors under this part of the proposed Act, and requires the inspector to pay the prescribed amount for the sample. If there is no prescribed amount, the market rate is payable.

Clause 137 explains how samples are to be taken from packaged substances. If a package contains smaller packs, the inspector can take one or more of the smaller packs and need not purchase the whole of the package.

Clause 138 sets out the procedure to be followed after a sample is taken. The sample must be divided into three parts, and marked and sealed accordingly. One part must be given to the person in charge of the premises from where the sample is taken, one part must be retained by the inspector for analysis, and the remaining part must be retained for future comparisons with the other two parts. The purpose of this provision is to ensure that disputes about the analysis results can be readily resolved.

Clause 139 explains that the procedure described in the previous clause will not apply in certain circumstances, for example, if dividing it would impede accurate analysis. In these circumstances, the inspector can take as many samples as necessary for the purpose of accurate analysis.

Clause 140 explains that the analysis may only be carried out by an authorised analyst, or by a person who is supervised by an authorised analyst. The authorised analyst is required to give the Minister a certificate about the analysis that complies with the requirements set out in this clause. **Clause 210** provides for the appointment of authorised analysts. The certificate will have specific evidentiary value under part 10 of the Bill.

Chapter 7 Enforcement powers

Part 7.1 contains general provisions dealing with enforcement powers.

Clause 141 defines terms that are used in Chapter 7.

Part 7.2 deals with general powers of inspectors under the proposed Act. These powers are necessary to ensure that inspectors are able to monitor compliance with the legislation. These powers are similar to powers of inspectors under other regulatory schemes.

Clause 142 contains a general power for inspectors to enter premises. It describes the circumstances in which the power to enter may be exercised, including entry with the consent of the person in control of premises, entry under warrant, and entry without consent or a warrant. It includes a power for an inspector to detain a vehicle that the inspector believes may be conveying dangerous substances or documents relating to the handling of dangerous substances, so that the vehicle may be searched. It also includes the power to direct a vehicle to a specified place, if the vehicle needs to be

relocated to facilitate the search, or to ensure the safety of other persons, property or vehicles.

Clause 143 requires inspectors to produce their identity cards when asked to do so by the person in control of premises that they enter. An inspector who does not produce his or her identity card must leave the premises.

Clause 144 explains the way in which an inspector can obtain the consent of the person in control to enter premises. The purpose of this provision is to ensure that the person's consent is fully informed. Among other matters, the inspector must ask the person in control to sign a written acknowledgement of consent. If a written acknowledgement of consent is not produced in court in subsequent proceedings, the Court must find that the person in control of premises did not consent to the entry.

Clause 145 sets out the general powers of inspectors in relation to premises that they enter under this Chapter of the Bill. These powers will enable the inspectors to examine things, make copies, take samples, open packages, operate plant or equipment, take measurements, conduct tests, make records, seize items, and to ask questions or obtain information. Inspectors may also ask another person at the premises for assistance in doing any of these things. These comprehensive powers are essential to ensure that inspectors can effectively monitor compliance with the proposed Act.

Clause 146 ensures that an inspector can exercise in public places the same powers that are set out in **clause 145**, if the inspector reasonably suspects there is a dangerous substance in the public place.

Clause 147 provides that it is an offence if a person does not comply with a requirement made by an inspector exercising his or her powers under **clause 145**.

Clause 148 gives an inspector the power to take direct action to remove or mitigate an imminent risk of serious harm or substantial damage arising from a dangerous substance. In exercising the power under this provision, an inspector can take or direct any reasonable action necessary to prevent, remove or minimise the risk. Where possible, the inspector should consult with the person in control of the premises where the dangerous substance is located. **Clause 149** requires an inspector to report to the chief executive on action taken under **clause 148**. Where an inspector takes direct action, **clause 150** provides that the Territory's costs associated with that action can be recovered from the person in control of the premises, the person who owned the dangerous substance or the person who caused the hazard. Costs are not payable by a person if someone else's actions were responsible for causing the hazard or the hazard could not reasonably have been prevented.

Clause 151 gives inspectors powers to enter premises if the inspector has reasonable grounds to believe a dangerous occurrence has happened at those premises (a dangerous occurrence is defined in **clause 38**). The purpose of this provision is to ensure that inspectors can readily gain access to premises in these circumstances, so that the occurrence can be properly investigated, the premises can be made safe and any evidence relating to the dangerous occurrence can be secured.

Clause 152 gives an inspector the power to seize things on premises that he or she has entered under this chapter of the Bill. The kinds of things that an inspector can seize are items that the inspector is satisfied are connected with any offences against the legislation that are related to the inspector's reasons for entering the premises. For instance, if an inspector believed that a person was manufacturing explosives without a licence, the inspector could, for example, seize explosive precursors found at the premises, or equipment used to manufacture explosives. An inspector can also seize any things covered by a warrant. Inspectors also have the power to seize things if the inspector is reasonably satisfied that the seizure is necessary to stop the thing from being concealed, lost or destroyed, or used to commit an offence.

Clause 153 provides that it is an offence to interfere with something that has been seized by an inspector under **clause 152**, without the inspector's approval. This is particularly important to ensure that a person does not interfere with a seized item that cannot be removed from the place of seizure. This is a strict liability offence, to ensure that people cannot frustrate a seizure or investigation.

Clause 154 gives inspectors the power to order the destruction or disposal of dangerous items that are inspected or seized under this chapter of the Bill. Without such a provision, the costs that the Territory would incur in safely storing these dangerous items could be considerable. Some items are so inherently dangerous that they cannot be safely used or stored and destruction is the only feasible option. Inspectors can give directions about the way in which the destruction or disposal is to be carried out. The Territory's costs associated with the destruction or disposal can be recovered from the person responsible for the dangerous thing.

Clause 155 provides that an inspector can require a person to provide their name and address if that person is reasonably suspected of involvement in the commission of an offence. It is a strict liability offence not to comply with the request under this clause, or to provide a false name.

Clause 156 empowers inspectors to require a person involved in handling a dangerous substance that requires a handling license to produce the handling license or other authority, for inspection. This power can be seen as analogous to the power that police officers have to request motorists to produce a current drivers license. It is a strict liability offence to fail to produce a handling license when requested to do so.

Part 7.3 contains provisions dealing with search warrants. These provisions are similar to search warrant provisions contained in other regulatory legislation. They explain the process for applying for a search warrant, the actions that search warrants may authorise, powers exercisable under search warrants that are to be executed, how searches are to be conducted and associated matters.

Clause 157 explains that inspectors can apply to a magistrate for a search warrant. Search warrants can be issued if a magistrate is satisfied that there is likely to be evidence of an offence under the legislation at premises either currently or within the next 14 days. A warrant issued by a magistrate must contain details such as when it is to be executed, the items that it applies to, the offence that it relates to, the actions that it authorises and the period for which it remains in force.

Clause 158 sets out the methods by which an application for a search warrant may be made to a magistrate if the inspector is not able to make the application in person. This provision is included to cover situations where search warrants are needed urgently, for example, because it is thought that evidence might be lost or destroyed if the search is not carried out promptly. The application may be made by such methods as phone, fax, radio or other forms of communication. This clause also includes procedural provisions for recording applications for warrants and the terms of any warrant issued as a result.

Clause 159 includes a general requirement that inspectors must announce that they are authorised to enter premises before they seek entry under the warrant. This requirement may not apply if the inspector believes on reasonable grounds that immediate entry is necessary for reasons of safety or to preserve evidence at the premises.

Clause 160 requires inspectors to give details of a search warrant to the person in control of premises that are to be searched under the warrant. The person in control must also be given a written statement of their rights and obligations.

Clause 161 makes it clear that a person in control of premises is generally entitled to be present during a search. This right is not absolute – a person can be excluded if his or her presence would impede the search, or if he or she is under arrest and being present at the search might interfere with the objectives of the search.

Clause 162 enables an item found at the premises to be moved elsewhere for examination or processing in order to decide whether the item can be seized under the search warrant. This provision is necessary because it is not always immediately apparent whether an item comes within the terms of a search warrant, and in these circumstances it is desirable to have a clear legal basis for moving items found on premises. The person in control of premises or their representative is entitled to observe while the item is examined or processed at the other location.

Clause 163 authorises the use of electronic equipment on premises that are being searched to access relevant data, providing the inspector reasonably believes the data is relevant to the search warrant and the equipment can be operated without damaging it. This clause also contains provisions for copying data, removing devices from the premises, seizing equipment and data storage devices, and transferring data into documentary form.

Clause 164 provides that an inspector can apply to a magistrate for an order that a person (for example, someone familiar with the electronic equipment or data system affected) provide assistance to the inspector to access data, copy the data or convert the data into documentary form. **Clause 163(2)** sets out the criteria for making an order of this type. It is an offence not to comply with an order under this clause.

Clause 165 also deals with electronic equipment at premises. It enables an inspector to take steps to secure electronic equipment at premises while expert assistance is being sought.

Clause 166 requires inspectors to provide to the person in control of premises or their representative, on request, copies of any documents, films, computer files or other reproducible items that have been seized. This obligation does not extend to material if the person in control would commit an offence by possessing that material.

Part 7.4 deals with the return and forfeiture of things seized under this chapter of the Bill.

Clause 167 explains that an inspector must give a receipt for any items seized to the person from whom they were taken. This provision is necessary so that seized items can be returned to the correct person, when they become available to be returned.

Clause 168 provides a right of access to documents or other things that are seized under this chapter of the Bill. The right of access applies to any person who would be entitled to inspect the item if it had not been seized.

Clause 169 deals with the return of seized items. It sets out the circumstances in which items must be returned to the owner, or in which compensation is to be paid to the owner for the loss of the thing seized. In brief, these circumstances are:

- where, within six months of seizure, no infringement notice has been served on the owner; an infringement notice was served but was then withdrawn, or no prosecution is subsequently initiated against the owner; an infringement notice is served but disputed, and no conviction results; a prosecution has been initiated but the person not been found guilty; or
- the chief executive decides, before the item has been forfeited to the Territory, that no offence has been committed or that the offence should not be prosecuted.

Clause 170 provides that a person who claims to be entitled to something that has been seized can apply within 10 days of the seizure to the Magistrates Court for an order disallowing the seizure. An application cannot be made for items that were seized under **clause 152 (4)** because they posed a risk to the health and safety of people, property or the environment.

Clause 171 sets out the grounds on which the Magistrates Court can disallow the seizure of an item. Among other matters, these grounds include where the court is satisfied that the thing is not connected to an offence, and possession of the thing is not an offence, or the Magistrates Court is satisfied that there are exceptional circumstances to justify disallowing the seizure. If the seized item cannot be returned, or if it has suffered a loss in value since it was seized, the Magistrates Court can also order the Territory to pay reasonable compensation.

Clause 172 enables the Magistrates Court to adjourn an application to disallow the seizure, while other legal proceedings occur, if the seized item is evidence in those proceedings.

Clause 173 deals with the forfeiture of things that have been seized under this chapter of the Bill. It explains that if a forfeited item has not been returned, destroyed or otherwise disposed of, and no application has been made to disallow its seizure, the

item is forfeited to the Territory and it may be sold, destroyed or otherwise disposed of as directed by the chief executive.

Clause 174 enables the chief executive to return something that has been forfeited under **clause 173** but has not been finally disposed of. The chief executive can return the item if he or she is satisfied that the item is not connected to an offence.

Clause 175 explains that where the Territory incurs costs in storing and disposing of a forfeited item and a person who was the owner of that item has been convicted or found guilty of an offence in relation to that item, the Territory can recover those costs from that person.

Part 7.5 contains other general provisions dealing with enforcement powers.

Clause 176 requires inspectors to take all reasonable steps to minimise inconvenience, detriment and damage when exercising powers or functions under the legislation. If damage does occur, the inspector must notify the owner of the thing that was damaged.

Clause 177 enables a person to claim compensation from the Territory for loss or expenses arising from the exercise, or purported exercise of functions under this chapter of the Bill. Any court of competent jurisdiction can decide applications for compensation.

Chapter 8 Emergency powers

This chapter deals with the powers of the Minister to act promptly to protect the health or safety of people from the risks associated with a dangerous substance in an emergency.

Clause 178 contains definitions of emergency order and recall order, which are two of the orders that can be made under this chapter.

Clause 179 empowers the Minister to make an emergency order if he or she considers this necessary to protect the public from a risk of serious harm or substantial damage from a dangerous substance. This provision creates a mechanism for quickly taking steps to protect the public from a serious threat posed by a dangerous substance.

Clause 180 describes the matters that an emergency order can authorise, which include publishing warnings, prohibitions on handling a dangerous substance, prohibitions on advertising, recalls, orders to dispose of dangerous substances, and prohibiting activities relating to a dangerous substance.

Clause 181 deals with the matters that can be covered by a particular type of emergency order, a recall order. Importantly, people who are required to recall a dangerous substance are obliged to give written notice to the chief executive when the recall is complete. This requirement is necessary for monitoring compliance with the recall order. People who are bound by a recall order are to bear the cost of that recall and to reimburse the Territory for its costs associated with the recall. The purpose of

this requirement is to ensure that these costs are borne by the people responsible for supplying or distributing the dangerous substance that is recalled.

Clause 182 explains the way that emergency orders are made, how they are served on the people who will be bound by them, how they are publicised, when they take effect and when they expire.

Clause 183 gives the Supreme Court the power to grant an order to stay or otherwise affect the operation of an emergency order. The Supreme Court can use this power only if it is satisfied that its actions will not create or increase the risk of serious harm or substantial damage from a hazard associated with the dangerous substance, or significantly aggravate the harm or damage from a serious hazard associated with a dangerous substance. This clause also requires the Supreme Court to bear in mind that the Territory can compensate a person bound by an emergency order if the emergency order should not have been made. The purpose of this requirement is to ensure that the Supreme Court does not give undue weight to the potential economic impact of the emergency order on the applicant, when considering whether or not to stay or vary an emergency order.

Clause 184 explains that it is an offence to fail to comply with an emergency order. This offence carries a maximum penalty of 500 penalty units, reflecting the fact that emergency orders are made to prevent or minimise serious harm to people or substantial damage to property or the environment, and that non-compliance can have serious consequences. It should be noted that an offence will only be committed if the person contravenes a prohibition imposed on them by the order, or if the person otherwise fails to take all reasonable steps to comply with the emergency order.

Clause 185 establishes a process for compensating people who incur loss or damage as a result of being bound by an emergency order that was based on insufficient grounds. An application for compensation can be made to the Minister, and if he or she considers that there were insufficient grounds for the order, reasonable compensation can be paid. The Minister is required to consider all applications for compensation and to provide reasons for any decision.

If no decision is made within 28 days, it is deemed that the application has been refused and the Minister will be required to provide reasons. Decisions of the Minister about compensation can be reviewed by the courts under the *Administrative Decisions (Judicial Review) Act 1989*.

Chapter 9 Administrative Review of Decisions

This chapter contains provisions dealing with administrative review rights for certain decisions taken under the legislation.

Clause 186 establishes the application of **chapter 9**, making a decision by the Minister, chief executive or an inspector made under the proposed Act, or a decision prescribed under the regulations, a reviewable decision.

Clause 187 requires a person who makes a reviewable decision to notify relevant people about that decision, so that they can decide whether or not to seek review by the administrative appeals tribunal.

Clause 188 deals with reviewable decisions that are subject to internal review. If a person is affected by an internally reviewable decision, other than a decision made personally by the Minister or the chief executive, the person may apply, in writing, to the chief executive for internal review of the decision. It is then up to the chief executive to arrange for someone else to review the decision.

Clause 189 imposes a time period in which applications for internal review must be made, and requires the grounds on which the internal review is sought to be specified. The provision also clarifies that an application for internal review does not affect the operation of the decision, ensuring that a decision remains valid and enforceable after an application for internal review has been made.

Clause 190 explains that a person internally reviewing a decision must confirm, vary or revoke the decision under review within 5 business days of the receipt of the application for internal review. If a decision to revoke or vary the original decision is not made within the time required, the decision is taken to be confirmed. Whatever the outcome of the review, the applicant for the review must be notified of the decision as soon as practicable.

Clause 191 establishes a right of review by the administrative appeals tribunal.

Chapter 10 Procedural and evidentiary provisions

Part 10.1 contains general provisions relating to offences against the Bill. The purpose of these provisions is to clarify certain issues of interpretation, procedure and evidence that are likely to arise in any proceedings for offences under the proposed Act.

Clause 192 deals with legal liability in respect of acts and omissions done by a person's representative, that is, someone who is employed by, or is an agent of a person. This clause explains the circumstances in which a person will be held liable for the acts or omissions of his or her representative. In brief, a person will be liable if the representative acted within the scope of the representative's actual or apparent authority. Accordingly, people who routinely use representatives in dealings involving dangerous substances should ensure that their representatives are properly trained and educated about their responsibilities under the proposed Act, and that it is made clear to them that they have no authority whatsoever to act otherwise than in strict accordance with the legislation.

Clause 193 imposes criminal liability for offences under the proposed Act on the executive officers of a corporation, in certain circumstances. In summary, an executive officer of a corporation will be liable for an offence by the corporation if the executive officer was reckless about whether the offence was committed, that officer had been in a position to influence the corporation's conduct, and he or she failed to take all reasonable steps to prevent the commission of the offence. The purpose of this provision is to ensure that senior managers within corporations that are involved in

handling dangerous substances ensure that they do everything reasonably within their power to ensure that their corporation complies with the legislation.

Clause 194 deals with samples that have been kept for future comparison with samples that have undergone analysis. It makes it clear that it is not a defence in a criminal proceeding under the legislation to claim that any part of the sample that has been kept for future comparison has deteriorated, perished or undergone a material change in its constitution. This provision recognises that some dangerous substances will ordinarily deteriorate over time, and given that there may be a considerable period of time elapsing between the analysis of a sample and the time that a proceeding comes before the court, the comparison sample may have deteriorated significantly in that period.

Clause 195 enables a court to make a remedial order against a person convicted or found guilty of an offence against the proposed Act. A remedial order directs a person to take any steps the court considers necessary and appropriate to rectify a state of affairs that resulted from the guilty person's conduct. This power is additional to the power of the court to make a reparation order under the *Crimes Act 1900* when it sentences the offender for the relevant offence.

Clause 196 confers on the court the power to order a convicted person to publish a statement. The Court can give directions to the person about the contents of a statement. The purpose of this provision is to give the court another option when dealing with offenders, recognising that the adverse publicity that such a statement would engender can be both a punishment and a significant deterrent.

Clause 197 provides that the chief executive can publish details of convictions for offences against the proposed Act. It sets out the matters that a notice published under this section can contain, and the timeframes within which the chief executive can choose to publish a notice about a conviction.

The provision also provides for when a publication must not be made, such as during the appeal period or if the conviction is quashed. As with the previous clause, the purpose of this provision is to provide a further disincentive for people handling dangerous substances to commit an offence.

Clause 198 gives the court the power to make orders about any costs and expenses relating to the examination, seizure, detention, storage, analysis, destruction or other disposition of any thing that is covered by a proceeding for an offence against the proposed Act. This power is in addition to any power that the court already has to make orders about costs in criminal proceedings.

Clause 199 provides that the court can order the forfeiture of any thing that was used in the commission of an offence against the proposed Act. This power is additional to any powers the court may have under the *Confiscation of Criminal Assets Act 2003*.

Clause 200 applies to offences that are committed by Territory entities. Under section 121 of the *Legislation Act 2001*, the Crown in any of its capacities is not subject to criminal proceedings. This provision is sometimes referred to as “the shield of the Crown”. It is therefore necessary to include other mechanisms to deal with

offences committed by Territory entities. This clause allows a notice of non-compliance to be served on the chief executive of the Territory entity that has committed the offence. The chief executive is required to publish in the annual report for that entity the number of non-compliance notices that have been served under this clause. This mechanism ensures that government entities can be held accountable for their actions.

Part 10.2 contains provisions dealing with evidence in proceedings for offences under the proposed Act.

Clause 201 details the presumptions that apply in criminal proceedings under the proposed Act. These presumptions apply unless the contrary position is established on the balance of probabilities. The purpose of these presumptions is to save both the court, and the parties to the criminal proceeding, the time, energy and resources that would otherwise have to be expended in establishing matters that would ordinarily conform to certain expectations.

Clause 202 deals with certificate evidence tendered in criminal proceedings under the proposed Act. It sets out the matters that can be evidenced by various forms of documents, including certificates, prepared under the proposed Act. Statements or other matters contained in these documents, certificates and so forth will be regarded as evidence of the matters that they refer to if there is no other evidence to the contrary. The effect of this clause is to relieve the person who tenders the document, certificates or so forth from the burden of proving that the matters it contains are true.

Clause 203 deals with the evidence given by analysts. It provides that if an analyst gives a certificate about a matter relevant to a criminal proceeding, that certificate is admissible in the proceeding and is evidence of the facts that it states. The analyst is not required to attend court to give evidence in person, but the court does have the power to order the analyst to attend as a witness.

Clause 204 makes it clear that the analysis of a sample that has been taken by an inspector cannot be admitted into evidence unless the sample was taken in compliance with part 6.7 (Taking and analysis of samples) of the proposed Act. This provision aims to ensure that inspectors take care to comply with the proposed Act when collecting samples.

Clause 205 gives the court the power to order that there be further analysis of a sample, if the analysts engaged by the parties to give evidence disagree about the results of the analysis of the sample. The part of the sample that can be sent by the court for further analysis by an independent analyst is the part that has been retained for future analysis under **clause 138** of the proposed Act. Unless the court orders otherwise, the Territory must pay for the further analysis.

Chapter 11 Administration

This chapter contains general provisions dealing with the administration of the proposed Act.

Clause 206 deals with inspection of incorporated documents. This provision relates to incorporated documents, or amended or replacement versions of incorporated documents, for which an incorporated document notice under **clause 220** has been issued. As documents for which an incorporated document notice has been issued are not required to be placed on the legislation register, the chief executive must ensure such documents are made available for inspection by the public free of charge during reasonable hours on business days.

Clause 207 explains who is an inspector for the purposes of the proposed Act. An inspector can be a police officer, or a public servant who has been appointed as an inspector.

Clause 208 deals with identity cards that must be issued to public servants who are appointed as inspectors, and explains the matters that must be stated on the identity card. A person who ceases to be an inspector must return the identity card as soon as practicable. It is an offence not to return an identity card as required by this clause.

Clause 209 deals with functions of inspectors for the purposes of the proposed Act. The provision details that the functions of inspectors include inspecting and monitoring the handling of dangerous substances, and any premises, plant or systems that relate to the handling of dangerous substances. The functions of inspectors also include investigating compliance with the proposed Act.

Clause 210 explains that the chief executive may appoint persons as an authorised analyst for the purposes of the proposed Act.

Clause 211 protects the secrecy of manufacturing or commercial secrets, work processes or any other information prescribed under the regulations that may be obtained under the proposed Act. The purpose of this clause is to ensure trade secrets are properly protected. Accordingly, it is an offence for an inspector or anyone else exercising a function under the proposed Act to make a record of, or to divulge or communicate, protected information if it is not in relation to the exercise of a function under this or another Act. However, it is not an offence if the information was divulged or communicated under circumstances contained in **clause 211(3)**, such as a communication to a law enforcement authority.

Clause 212 explains that officials who exercise functions under the proposed Act do not incur any civil liability for any of their actions or omissions that are done honestly and without negligence. To the extent that civil liability does attach to an official, it instead attaches to the Territory. The effect is that the Territory indemnifies officials exercising functions under the proposed Act.

Chapter 12 Regulations about dangerous substances

This chapter contains provisions dealing with the power to make regulations for the purposes of the proposed Act.

Clause 213 makes it clear that the regulations can apply, adopt or incorporate other instruments as those instruments are in force from time to time. The purpose of this provision is to ensure that any such regulations need not be amended every time the instruments to which they refer are altered or updated.

Clause 214 provides for regulations to establish a scheme for regulating the handling of explosives. It puts beyond any doubt that the regulatory scheme does not require that every aspect of explosives handling be made subject to a license. It explains that the regulations can deal with the types of explosives that may be handled, and lists other aspects that can be specifically addressed by the regulations. The regulations can also deal with dangerous substances used as precursors for the manufacture of explosives.

Clause 215 explains that the regulations can deal with licences for handling dangerous substances. It describes the sorts of matters that the regulations may prescribe in relation to licences, including regulations about the effect in the ACT of corresponding laws of other jurisdictions.

Clause 216 contains a general regulation making power in relation to dangerous substances, including power to make regulations about examining and testing, classification, advertising, and all aspects of handling and otherwise dealing with dangerous substances safely. Like **clause 214**, these regulations can also deal with precursor substances used to manufacture dangerous substances.

Clause 217 makes it clear that the regulations can exempt plant, premises or people from the application of the proposed Act, or they can authorise the chief executive to make such exemptions. This clause also explains that the regulations can make exemptions conditional. This clause further explains that the regulations may also deal with failures to comply with any conditions attached to exemptions, for example by creating offences for breaching such conditions. Regulations made under this clause can allow the chief executive to suspend regulations dealing with exemptions, or to suspend the operation of exemptions given by the chief executive.

Chapter 13 Miscellaneous

Clause 218 makes it clear that the Minister may, in writing, exempt people, plant, premises or dangerous substances from the application of the Act. An exemption under this clause can be conditional. An exemption under this provision will be a disallowable instrument. The Minister cannot use exemptions to override the regulations, as **clause 218(2)** makes it clear that exemptions have no effect if they are inconsistent with the regulations.

Clause 219 authorises the Minister to approve codes of practice. A code of practice can establish guidelines recommending the way that matters should be done.

Clause 219(2) expressly permits codes of practice to apply, adopt or otherwise

incorporate instruments that are in force from time to time. The Legislative Assembly can disallow a code of practice.

Clause 220 explains the way in which certain incorporated documents are to be notified. It makes it clear that the usual provisions under the *Legislation Act 2001* dealing with the notification of incorporated documents on the Legislation Register (sections 47(6) and 47(7)) do not apply. Instead, the chief executive may prepare a written notice containing details about the incorporated documents, and it is this notice (termed an *incorporated document notice*) that must be included on the Legislation Register. This provision is necessary because some of the incorporated documents may not be able to be reproduced in a form suitable for inclusion on the Legislation Register, or they may be subject to copyright restrictions.

The provision also addresses the amendment or replacement of an incorporated document. An incorporated document has no effect (other than a document mentioned in **clause 10(3)** unless it has been properly notified in accordance with the proposed Act or in accordance with the *Legislation Act 2001*. A document mentioned in **clause 10(3)** is applied as in effect at the commencement of **clause 10(3)**, as per **clause 10(4)**.

Clause 221 authorises the Minister to set fees for the purposes of the proposed Act. These determinations are also disallowable instruments.

Clause 222 authorises the Minister to approve forms for the purposes of the proposed Act. An approved form is a disallowable instrument.

Clause 223 contains a general regulation making power for the purposes of the Act. It makes it clear that the regulations can include offences for breaches of the regulations and that the maximum penalty for such offences is 30 penalty units.

Chapter 14 Consequential and transitional matters

This chapter contains provisions that are necessary for moving from the old scheme for regulating dangerous goods and hazardous substances to the new scheme to be established under the proposed Act.

Clause 224 lists the legislation that will be repealed by the proposed Act.

Clause 225 explains what will happen to licences that have been issued under the existing regulatory scheme. Certain licences that were in force under the *Dangerous Goods Act 1975* just before the proposed Act commences will be regarded as licences issued under the new law. However, explosives licenses issued under the previous law will not continue to be in force under the new law. Those licences will end when the proposed Act commences.

Clause 226 contains a temporary definition of LPG for the purposes of **clause 7** of the Bill. This definition will apply only until 1 July 2004. This date is when the new *Construction Occupations Legislation Amendment Act 2003* will commence, and when the definition of LPG in **clause 7** of this Bill will take effect.

Clause 227 contains a power to make regulations dealing with transitional matters. A clause of this nature is usually included when an enactment is being repealed and replaced. It ensures that any matters that may have been inadvertently omitted when developing the transitional provisions can be dealt with appropriately. This is necessary in order to facilitate a smooth transition from the old scheme to the new scheme.

Clause 228 makes it clear that the regulations can modify the operation of this chapter of the Bill so that it covers any matter the executive believes to have been inadequately dealt with by this chapter. The purpose of this provision is to facilitate a smooth transition to the new legislation.

Clause 229 explains that **Schedule 1** includes amendments to other legislation. These amendments are consequential to the enactment of this Bill.

Clause 230 is a standard provision that explains when chapter 14 expires. The purpose of this provision is to ensure that transitional provisions are not retained on the statute books for any longer than necessary.

Schedule 1 contains amendments to the following laws:

- *Court Security Act 2001*;
- *Firearms Act 1996*;
- *Firearms Regulations 1997*;
- *Legislation Act 2001*;
- *Occupational Health and Safety Act 1989*;
- *Occupational Health and Safety Regulations 1991*;
- *Road Transport (Alcohol and Drugs) Act 1977*; and the
- *Road Transport (Safety and Traffic Management) Regulations 2000*.

These amendments mainly adjust terminology used in the above legislation to reflect the change from the old scheme to the new scheme. This includes new or revised definitions of dangerous substances, explosives and dangerous occurrences. Redundant provisions are also omitted; and references to the proposed Act are inserted.

The **Dictionary** contains further definitions of terms and concepts used in the proposed Act.