



THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

2004

**DANGEROUS SUBSTANCES BILL 2003
Government Amendments**

EXPLANATORY STATEMENT

Circulated by authority of the
Minister for Industrial Relations
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DANGEROUS SUBSTANCES BILL 2003

OUTLINE

The amendments of the Bill are generally made to effect corrections and clarifications of the provisions of the Bill.

Notes on Clauses

Item 1 amends **clause 10(1)(d)** to substitute "transported" for "carried". The reference is to "goods too dangerous to be transported" as defined in appendices of the Australian Dangerous Goods Code.

Item 2 inserts the word "as" to make clear the document referred to in **clause 10(3)** is the version in effect as of the commencement of the legislation.

Item 3 inserts a **new clause 14(3)** to ensure that where dangerous substances are packaged, the packaging must be labeled or placarded in accordance with the regulations. This clarification is required because substances can be labeled and supplied under certain circumstances without packaging.

Item 4 substitutes the reference to "kill or injure a person" with "cause the death of or harm to a person". The latter is consistent with other provisions in the Bill, see eg, clauses 43 and 44 which refer to safety duty offences.

Item 5 inserts the words "to a substantial risk of" in **clause 43(d)(i)** and **(ii)**. This corrects the inadvertent omission of the words and is consistent with similar provisions in **clause 45(d)(i)** and **(ii)**.

Item 6 inserts the words "before the day the application is made" into **clause 49(1)(f)** to make the meaning of "before" explicit and clear.

Item 7 replaces **clause 51(2)(d)** with a similar clause which clarifies that the information referred to must be relevant to the consideration of the "designated matter" as defined in **clause 51(1)**. This is consistent with preceding provisions in **clause 51(2)(a)** and **(b)**.

Item 8 inserts a new note referring to section 171 of the *Legislation Act 2001* after **clause 92(3)** to ensure that a person affected by the exercise of an inspector's powers will be aware that they can claim the benefit of client legal privilege. This amendment was suggested by the Scrutiny of Bills and Subordinate Legislation Committee in report no 43 of 10 February 2004.

Item 9 refers to **clause 112** which is about prohibition notices. A notice may require a person not to do one or more things. The amendment inserts the word "not" into the clause to make clear that people in a workplace affected by the notice are properly informed of its contents including what they must not do.

Item 10 refers to **clause 119** which is about offences for the contravention of prohibition notices. It substitutes a reference to the person who is given a notice with reference to a person to whom the notice relates. This means that any person – not just the person given the notice – can commit the offence if the notice relates to him or her.

Items 11 and 12 substitute the word "charge" for "control" in **clause 135** and **clause 138**. In these clauses, the appropriate reference is to the "person in charge" of premises as defined in the dictionary as a "person believed, on reasonable grounds, to be a person in charge of, or the occupier of, the premises".

Item 13 amends **clause 15(b)(ii)** to make explicit that an inspector who has entered a premise may examine, copy, or take extracts from documents which relate to a contravention or possible contravention of the Act.

Item 14 amends **clause 145(h)** to clarify that an inspector who has entered a premise can carry out an examination to ascertain whether there has been compliance with the Act in the past as well as in the present.

Item 15 clarifies **clause 154(4)** by amending the reference to "a" thing (which is a general article) with a reference to "the" thing thus making the reference specific to the thing which is the subject of the offence established in the clause.

Item 16 amends the penalty provision in **clause 155(3)** which establishes an offence where a person refuses to state his or her name and address at the request of an inspector. The penalty appears in error as 100 penalty units. This is out of line with similar offences in other legislation. The penalty is amended to 10 penalty units.

Item 17 amends an error in the **clause 157(5)(b)** of the Bill which refers incorrectly to the requirement that a search warrant must state the offence for which the warrant is "sought". This should read "issued".

Item 18 clarifies **clause 158(5)(b)** by inserting the word "the" in front of the reference to a warrant form thus making the reference specific to the warrant form completed by the inspector.

Item 19 amends **clause 164(3)** by substituting the reference to "a" person with a reference to "the" person thus making the reference specific the person who commits the offence established in the clause.

Items 20 to 26 amend **clause 169** which refers to the return of things seized. The clause sets out the circumstances in which items must be returned to the owner. The amendment replaces references to 6 months with references to 1 year. The extended timeframe is necessary to ensure that seized evidence is not returned prematurely in a case where a complex investigation is underway and not able to be completed within 6 months.

Item 27 inserts the words "found guilty" into **clause 196** which provides for court-directed publicity for offences. This ensures that that court can order a person to publish a statement in relation to an offence where the person is either convicted or found guilty. This amendment is consistent with **clause 197** which provides that a chief executive can publish information about a person who is convicted or found guilty of an offence.

Item 28 relates to **clause 197** which provides that a chief executive can publish information about a person who is convicted or found guilty of an offence. The amendment omits **clause 197(2)(d)** which would enable the chief executive to publish information about a conviction or finding of guilt in addition to the identity of the person, the details of the offence and the penalty imposed. As **clause 197(5)** provides the chief executive with protection against defamation under the *Civil Law (Wrongs) Act 2002*, it is considered that the information which the chief executive should be of the type that is publicly available in official Court reports.

Item 29 inserts **new clause 211(4)** which allows protected information (manufacturing secrets etc) to be withheld from a court if the disclosure is not necessary for the purposes of this Act or another Act. The provision is directed at giving holders of protected information confidence that protected information accessed by people exercising functions under the Act can be withheld in legal proceedings unless there is a clear reason to make the information available.