

NORTHERN TERRITORY OF AUSTRALIA

DANGEROUS GOODS ACT

As in force at 18 August 2004

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 18 August 2004

DANGEROUS GOODS ACT

An Act to provide for the safe storage, handling and transport of certain dangerous goods

Part 1 Preliminary

1 Short title

This Act may be cited as the *Dangerous Goods Act*.

2 Commencement

The provisions of this Act come into operation on the date or dates fixed by the Administrator by notice in the *Gazette*.

3 Definitions

In this Act, unless the contrary intention appears:

code of practice means a code of practice under section 37 as in force from time to time.

Competent Authority means the Chief Executive Officer, within the meaning of the *Public Sector Employment and Management Act*, of the Agency allotted the responsibility for the administration of this Act by an Administrative Arrangements Order.

container means a thing in or by which dangerous goods are wholly or partly encased, covered, enclosed, contained or packed and includes a component, receptacle, covering or material necessary for the container to perform its containment function.

convey, in relation to dangerous goods, includes the transport, transmission and carriage of the dangerous goods by any means and the transport, transmission and carriage of dangerous goods by a pipeline or within premises.

dangerous goods means substances or thing:

- (a) declared by the Competent Authority under section 6; or

(b) prescribed by the Regulations,

to be dangerous goods.

dangerous situation means a situation or occurrence involving dangerous goods that:

(a) is causing or is likely to cause imminent risk of the death of or injury to a person or damage to property; or

(b) has resulted in the death of or injury to a person or damage to property,

and includes an explosion, fire or loss of containment of dangerous goods and a likely explosion, fire or loss of containment of dangerous goods.

further notice means a notice given under section 25.

handling, in relation to dangerous goods, includes preparing, packaging, manufacturing, storing, using, loading, unloading, supplying, selling, purchasing, receiving, processing, treating, labelling, marking, dispensing, transferring, rendering harmless, placarding, destroying, disposing of, conveying and transporting of the dangerous goods.

hazard means any thing or situation capable of injuring a person, compromising the health or safety of a person or damaging property and includes a dangerous situation.

improvement notice means a notice given under section 24.

involved in handling dangerous goods includes:

(a) to arrange for the handling of dangerous goods;

(b) to import or export, or arrange the import or export of, dangerous goods into the Territory;

(c) to consign, or receive or be the consignee of, dangerous goods;

(d) to undertake or be responsible for handling dangerous goods;

(e) to drive or operate a vehicle conveying dangerous goods;

(f) to be involved as a director, secretary or manager of a body corporate, or other person who takes part in the management of a body corporate, that takes part in the handling of dangerous goods; and

- (g) to be an occupier of premises where dangerous goods are handled.

licence means a licence granted under the Regulations and includes a provisional licence, permit, notice of approval, certificate, provisional certificate and a renewal of a licence, permit, notice of approval or certificate.

licensee means a person granted a licence.

manufacture includes to make, remake, alter, break up and recondition.

member of the Fire and Rescue Service means a member of the Northern Territory Fire and Rescue Service, other than a volunteer member or an auxiliary member, within the meaning of the *Fire and Emergency Act*.

officer means a person appointed under section 17(1) and includes:

- (a) the Competent Authority; and
- (b) a person referred to in section 17(3).

person in charge of the dangerous goods means, in relation to dangerous goods or goods an officer reasonably believes to be dangerous goods:

- (a) the occupier of the place, premises or vehicle where, or on or in which, the goods are being or have been handled;
- (b) the person who owns the goods;
- (c) the employer (or manager) in relation to the place, premises or vehicle where, or on or in which, the goods are being or have been handled; or
- (d) a person licensed in relation to the goods.

plant includes:

- (a) machinery, pressure vessels, equipment, appliances, implements, scaffolding and tools; and
- (b) any component of or thing fitted, connected or appurtenant, to plant.

practicable, in relation to a hazard, risk or dangerous situation, means practicable having regard to:

- (a) the severity of the hazard, risk or danger;
- (b) the state of knowledge about the hazard, risk or dangerous situation and the ways of averting, eliminating or minimising the hazard, risk or danger;
- (c) the availability and suitability of ways to avert, eliminate or minimise the hazard, risk or danger; and
- (d) the cost of averting, eliminating or minimising the hazard, risk or danger.

premises includes land and permanent or temporary buildings and structures on land.

prohibition notice means a notice given under section 22.

risk means the probability of a hazard injuring a person, compromising the health or safety of a person or damaging property.

sell includes:

- (a) barter or exchange;
- (b) contract to sell or offer or expose for sale, barter or exchange;
- (c) authorise, permit, cause or suffer to be sold, bartered, exchanged or offered or exposed for sale;
- (d) have in possession for the purpose of sale, barter or exchange; and
- (e) authorise, permit, cause or suffer to be sent, forwarded or delivered for sale or for barter or exchange.

substance includes a solid, liquid or gas or any mixture of solids, liquids or gases.

vehicle means a vehicle used or intended to be used, or adapted or capable of being adapted for use, on roads or rails and includes:

- (a) a train;
- (b) a trailer or caravan intended or adapted or capable of being adapted for use as an attachment to a vehicle; and
- (c) anything attached to a vehicle, trailer or caravan.

4 Application

- (1) This Act does not apply to or in relation to:
 - (a) radioactive substances within the meaning of the *Radiation (Safety Control) Act*;
 - (b) radioactive material within the meaning of the *Radioactive Ores and Concentrates (Packaging and Transport) Act*;
 - (c) a prescribed substance within the meaning of the *Atomic Energy Act 1953* of the Commonwealth;
 - (d) a mine within the meaning of the *Mine Management Act*; or
 - (e) work or service of any kind performed at a mine within the meaning of the *Mine Management Act*.
- (2) This Act does not apply in relation to:
 - (a) the transport of dangerous goods by road or rail; or
 - (b) any associated activity or matter,to the extent to which it is regulated by the *Dangerous Goods (Road and Rail Transport) Act* or regulations made under that Act.
- (3) In the event of an inconsistency between:
 - (a) a provision of this Act and a provision of the *Dangerous Goods (Road and Rail Transport) Act* or regulations made under that Act, the provision of the *Dangerous Goods (Road and Rail Transport) Act* or regulations prevails; and
 - (b) a provision of the regulations made under this Act and a provision of regulations made under the *Dangerous Goods (Road and Rail Transport) Act*, the provision of the regulations made under the *Dangerous Goods (Road and Rail Transport) Act* prevails.

5 Act to bind Crown

This Act binds the Crown in right of the Territory and, so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

Part 2 Administration

6 Declaration, &c., by Competent Authority

- (1) The Competent Authority may, by notice in the *Gazette*:
 - (a) declare a substance or thing (including a chemical) to be dangerous goods; and
 - (b) classify a substance or thing declared under paragraph (a).
- (2) A declaration or classification under subsection (1) may be made by reference to, or by adopting or incorporating, a standard, rule, code, specification or guide relating to the dangerous goods or the classification of the dangerous goods as in force at a particular time.

7 Delegation

- (1) The Competent Authority may, in writing, delegate to a person any of his or her powers and functions under this Act or the Regulations, other than this power of delegation.
- (2) A delegation under subsection (1) may be made to a named person or to a person from time to time holding, acting in or performing the duties of a named office, designation or position.
- (3) A power or function delegated under this section when exercised or performed by the delegate is to be taken to have been exercised or performed by the Competent Authority.
- (4) A delegation under this section does not prevent the exercise of a power or performance of a function by the Competent Authority.

8 Control of Competent Authority

The Competent Authority is subject to the directions of the Minister when exercising his or her powers and performing his or her functions.

Part 3 General duties and offences in relation to dangerous goods

9 Safe handling of dangerous goods

- (1) A person involved in the handling of dangerous goods must ensure, as far as practicable, that the goods are handled safely.

Penalty: In the case of a body corporate:

- (a) \$250 000; or
- (b) where an offence results in death or grievous harm to a person – \$500 000.

In the case of a natural person:

- (a) \$50 000 or imprisonment for 2 years; or
- (b) where an offence results in death or grievous harm to a person – \$100 000 or imprisonment for 4 years.

- (2) Without limiting subsection (1), a person involved in the handling of dangerous goods contravenes that subsection if he or she fails to ensure, as far as practicable, that:

- (a) the goods are handled in a manner or in circumstances that the goods will not:
 - (i) endanger or be likely to endanger the safety or health of a person; or
 - (ii) damage or be likely to damage any property; or
- (b) the goods are not abandoned.

- (3) Without limiting subsection (1), a person in charge of dangerous goods contravenes that subsection if he or she fails to ensure, as far as practicable, that:

- (a) where plant or a container, vehicle, building or structure is used in the handling of the goods, the plant, container, vehicle, building or structure is safe and maintained in a safe condition;
- (b) plant, containers and substances used, handled, stored or transported in relation to the goods are used, handled, stored or transported in a safe manner; or

- (c) a system is in place that provides and ensures:
 - (i) the safe management of the goods;
 - (ii) the identification of hazards and the assessment and control of risks;
 - (iii) safe work practices;
 - (iv) that appropriate information, training, instruction and supervision are provided in relation to the safe handling of the goods to each person involved in the handling of the goods; and
 - (v) that appropriate information in relation to the safe handling of the goods is provided to other persons affected, or likely to be affected, by the handling of the goods.

10 Person not to cause or contribute to dangerous situation

A person must not knowingly cause, or knowingly contribute to, a dangerous situation.

Penalty: In the case of a body corporate – \$250 000.

In the case of a natural person – \$50 000 or imprisonment for 2 years.

11 Duties of manufacturers, &c., of dangerous goods

- (1) A person who manufactures, imports or supplies dangerous goods must ensure, as far as practicable, that the goods are not imported into, or supplied in, the Territory in an unsafe condition.

Penalty: In the case of a body corporate – \$250 000.

In the case of a natural person – \$50 000.

- (2) A person who manufactures, imports or supplies dangerous goods must ensure, as far as practicable, that the goods are:
 - (a) given the correct classification as required by this Act or the Regulations;
 - (b) listed and labelled in accordance with the Regulations; and

(c) contained in an appropriate container.

Penalty: In the case of a body corporate – \$50 000.

In the case of a natural person – \$10 000.

(3) A person who manufactures, imports or supplies dangerous goods must ensure, as far as practicable, that:

(a) adequate toxicological data in respect of the goods; and

(b) all other information and data relevant to the safe handling of the goods,

is provided when the goods are supplied by him or her and at any time at the request of a person.

Penalty: In the case of a body corporate – \$50 000.

In the case of a natural person – \$10 000.

12 Duties of manufacturers, &c., of plant

A person who designs, manufactures, imports, supplies or sells plant or a container, vehicle, building or structure intended to be used in the handling of dangerous goods must ensure, as far as practicable, that the design and characteristics of the plant, container, vehicle, building or structure are such that the use of the plant, container, vehicle, building or structure in accordance with the designers, supplier's or manufacturer's instructions is not likely to endanger the safety or health of a person or to damage any property.

Penalty: In the case of a body corporate – \$250 000.

In the case of a natural person – \$50 000.

13 Duties of erectors and installers of plant, &c.

A person who erects or installs plant or a container, building or structure intended to be used in connection with dangerous goods must ensure, as far as practicable, that the plant, container, building or structure is erected or installed so that a person who uses the plant, container, building or structure is not subjected to hazards that arise from, or are increased by, the way in which the plant, container, building or structure is erected or installed.

Penalty: In the case of a body corporate – \$250 000.

In the case of a natural person – \$50 000.

14 Duties of persons in charge of plant, &c.

The person in charge of:

- (a) a building or structure, including fixtures and fittings of the building or structure that are under his or her control; or
- (b) plant or a container or vehicle,

used in the handling of dangerous goods must ensure, as far as practicable, that the condition or use of the plant, container, vehicle, building, structure or fixtures or fittings is not likely to endanger the safety or health of a person or to damage any property.

Penalty: In the case of a body corporate – \$250 000.

In the case of a natural person – \$50 000.

15 Goods too dangerous to transport

A person must not transport, or cause or arrange to transport, dangerous goods that the Regulations specify are too dangerous to transport.

Penalty: In the case of a body corporate – \$250 000.

In the case of a natural person – \$50 000 or imprisonment for 2 years.

16 Offences

(1) A person must not:

- (a) refuse an officer access to a place, premises or vehicle;
- (b) refuse to produce to an officer a document required to be produced under this Act, the Regulations or any other Act;
- (c) conceal the location or existence of a person, plant, container, vehicle or substance from an officer;
- (d) prevent a person from assisting an officer;
- (e) in any other way hinder, impede or oppose, or induce a person to hinder, impede or oppose, an officer in performing his or her functions or exercising his or her powers under this Act, the Regulations or any other Act;
- (f) give to an officer information that the person knows is false or misleading in a material particular; or

(g) fail to comply with a direction made by an officer.

Penalty: In the case of a body corporate – \$50 000.

In the case of a natural person – \$10 000, or imprisonment for 6 months.

(2) A person must comply with an officer's request under section 18(1)(f) unless the person has a reasonable excuse for not complying with it.

Penalty: \$500.

(3) For the purposes of this section, a person authorised under section 18(5) to assist an officer is an officer while acting within the scope of his or her authorisation.

Part 4 Officers

17 Appointment of officers

(1) The Competent Authority may, in writing, appoint a person to be an officer.

(2) An officer is subject to the directions of the Competent Authority and the Minister when exercising his or her powers and performing his or her functions.

(3) A member of the Police Force and a member of the Fire and Rescue Service is an officer while exercising the powers conferred on him or her by section 18(3) or 19(1).

18 General powers and functions of officers

(1) An officer, other than an officer referred to in section 17(3), may:

(a) enter a place, premises or vehicle that he or she reasonably believes is being or has been used in the handling of dangerous goods;

(b) inspect a place, premises or vehicle, or anything in or on a place, premises or vehicle, that he or she reasonably believes is being or has been used in the handling of dangerous goods;

(c) direct a person in control of a vehicle that he or she reasonably believes is being or has been used to convey dangerous goods to stop the vehicle;

- (d) detain a vehicle that he or she reasonably believes is being or has been used to convey dangerous goods and inspect the vehicle and its load;
- (e) where he or she reasonably believes that an offence is being or has been committed against this Act or the Regulations, seize any dangerous goods, plant, vehicle, package, container, document, paper or record relating to or used in connection with the handling of dangerous goods and that he or she reasonably believes is related to the alleged offence;
- (f) where he or she reasonably believes that a person is involved in the handling of dangerous goods, require the person to:
 - (i) state the person's name and address; and
 - (ii) provide evidence that the stated name and address are correct;
- (g) examine, take stock of and take samples, without cost to the Territory, and, if necessary, open a container of dangerous goods or goods that he or she reasonably suspects to be dangerous goods;
- (h) install and use on premises, at a place or in or on a vehicle, where dangerous goods are handled, equipment or a measuring device to sample, measure or analyse a substance or material that he or she reasonably believes may be, or contain, dangerous goods;
- (j) enter and inspect a place, premises or vehicle where or in or on which:
 - (i) dangerous goods are kept; or
 - (ii) an officer reasonably believes dangerous goods are kept,and examine a licence or record required to be kept under this Act or the Regulations and, at the Territory's expense, take notes or extracts from the licence or records; and
- (k) give directions not inconsistent with this Act or the Regulations to a person involved in the handling of dangerous goods with respect to the handling of the goods.

- (2) Without limiting subsection (1), an officer, other than an officer referred to in section 17(3), may:
- (a) enter a place, premises or vehicle at, in, on or in relation to which he or she reasonably believes there is or has been a dangerous situation;
 - (b) inspect a place, premises or vehicle, or anything in or on a place, premises or vehicle, at, in, on or in relation to which he or she reasonably believes there is or has been a dangerous situation;
 - (c) direct a person in control of a vehicle in, on or in relation to which he or she reasonably believes there is or has been a dangerous situation to stop the vehicle; and
 - (d) detain a vehicle in, on or in relation to which he or she reasonably believes there is or has been a dangerous situation and inspect the vehicle and its load.
- (3) An officer referred to in section 17(3) may, where he or she reasonably believes that an offence against this Act or the Regulations has been, is being or will be committed in relation to dangerous goods:
- (a) enter a place, premises or vehicle that he or she reasonably believes is being or has been used in the handling of the dangerous goods;
 - (b) inspect a place, premises or vehicle, or anything in or on a place, premises or vehicle, that he or she reasonably believes is being or has been used in the handling of dangerous goods;
 - (c) direct a person in control of a vehicle that he or she reasonably believes is being or has been used to convey the dangerous goods to stop the vehicle;
 - (d) detain a vehicle that he or she reasonably believes is being or has been used to convey the dangerous goods and inspect the vehicle and its load; and
 - (e) give directions not inconsistent with this Act or the Regulations to a person involved in the handling of the dangerous goods with respect to the handling of the goods.
- (4) An officer or a person authorised under subsection (5) may direct a person in charge, or involved in the handling, of dangerous goods or goods that the officer or person reasonably believes to be dangerous goods to assist the officer or person in exercising or performing a power or function of the officer or person under this

Act or the Regulations in relation to the goods.

- (5) An officer may, where necessary for the purposes of exercising a power or performing a function under this Act or the Regulations, authorise a person to assist the officer.
- (6) A person authorised under subsection (5) may exercise the powers and perform the functions of an officer within the scope of the person's authorisation.

19 Officer may direct person to answer questions

- (1) An officer may:
 - (a) in order to find out whether this Act or the Regulations are being complied with; or
 - (b) in order to carry out an investigation in relation to a dangerous situation,

direct a person to answer a question, produce a document or provide information.

- (2) A person is not excused from answering a question, producing a document or providing information on the ground that the question, document or information might tend to incriminate the person, but the answer, document or information is not admissible in evidence against the person in criminal proceedings other than for an offence against section 16(1)(e), (f) or (g).

20 Protection of officers and authorised persons

- (1) No action or proceeding, civil or criminal, lies against the Territory, the Competent Authority or an officer for or in respect of an act or thing done or omitted to be done in good faith by the Competent Authority or officer in his or her capacity as the Competent Authority or officer.
- (2) For the purposes of subsection (1), a person authorised under section 18(5) to assist an officer is an officer while acting within the scope of his or her authorisation.

21 Power to destroy, &c., certain dangerous goods

- (1) The Competent Authority or an officer appointed under section 17(1) may, if he or she reasonably believes that it is necessary in the public interest or for the safety of a person:
 - (a) dispose of, destroy or render safe dangerous goods or plant, installations or containers used in the handling of dangerous goods;
 - (b) render safe a place, premises or vehicle where or in or on which dangerous goods have been or are being handled; or
 - (c) give directions to a person in respect of:
 - (i) the disposal, destruction or rendering safe of dangerous goods, plant, installations or containers; or
 - (ii) rendering safe of a place, premises or vehicle.
- (2) An officer may only take action under subsection (1) where:
 - (a) the officer has the written authority of the person in charge of the dangerous goods, plant, installations, container, place, premises or vehicle or the person's agent;
 - (b) the officer has the consent of the Competent Authority; or
 - (c) the officer reasonably believes that:
 - (i) there is imminent danger to a person or property; or
 - (ii) a dangerous situation is occurring, has occurred or is about to occur.
- (3) The cost of disposing of, destroying or rendering safe dangerous goods or plant, installations or containers or rendering safe a place, premises or vehicle, under subsection (1) is:
 - (a) a debt due and payable to the Territory; and
 - (b) recoverable jointly and severally from each person in charge of the dangerous goods.
- (4) A certificate purporting to be signed by the Competent Authority or an officer appointed under section 17(1) specifying the cost of disposing of, destroying or rendering safe dangerous goods or plant, installations or containers or rendering safe a place, premises or vehicle under subsection (1) is evidence of the cost.

Part 5 Prohibition and improvement notices

22 Competent authority may give prohibition notice

- (1) The Competent Authority may give a prohibition notice to a person where the Competent Authority reasonably believes that:
 - (a) a dangerous situation is occurring or is likely to occur; and
 - (b) the person is able to take action to avert, eliminate or minimise the danger.
- (2) A prohibition notice is to:
 - (a) be in writing;
 - (b) state the name of the person to whom the notice is directed;
 - (c) state where the Competent Authority reasonably believes that the dangerous situation is occurring or is likely to occur;
 - (d) state the grounds on which the belief is based;
 - (e) where the Competent Authority reasonably believes the act or activity involves or will involve a contravention or likely contravention of this Act or the Regulations, specify the relevant provision and state the reasons for that belief; and
 - (f) specify any act or activity that is prohibited until the Competent Authority certifies in writing that the dangerous situation has ceased or will not occur.
- (3) The Competent Authority may include in a prohibition notice instructions as to the measures to be taken to avert, eliminate or minimise the danger to which the notice relates.
- (4) An instruction under subsection (3) may:
 - (a) refer to a code of practice; and
 - (b) offer the person to whom it is issued a choice of ways in which to avert, eliminate or minimise the danger to which the notice relates.
- (5) Where the Competent Authority is of the opinion that a dangerous situation relating to a prohibition notice has ceased or will not occur, he or she must certify in writing that the dangerous situation has ceased or will not occur.

- (6) Where an appeal is made under section 28 against a prohibition notice, the Competent Authority must not certify under subsection (5) or revoke or suspend the prohibition notice until after the appeal is withdrawn or decided.
- (7) A prohibition notice remains in force until:
- (a) the Competent Authority certifies under subsection (5);
 - (b) the Competent Authority revokes or suspends the notice; or
 - (c) the Local Court revokes the notice under section 28(3)(d).
- (8) A person to whom a prohibition notice is given must not contravene or fail to comply with the notice.

Penalty: In the case of a body corporate – \$50 000 and \$3 000 for each day during which the offence continues.

In the case of a natural person – \$10 000 or imprisonment for 6 months and \$1 000 for each day during which the offence continues.

23 Competent Authority may place mark on plant or container

- (1) Where the Competent Authority gives a prohibition notice in respect of an act or activity relating to the use of plant or a container, the Competent Authority may place a mark on the plant or container, or any part of the plant or container, to indicate that the plant or container, or the part, that is marked is not to be used.
- (2) Where a mark is placed on plant or a container or a part of plant or a container, a person must not use the plant or container or the part on which the mark is placed or remove, obliterate or otherwise interfere with the mark until:
- (a) the Competent Authority certifies under section 22(5) in respect of the act or activity relating to the use of the plant or container or the part;
 - (b) the Competent Authority revokes or suspends the prohibition notice in whole or in relation to the act or activity;
 - (c) the Local Court revokes the prohibition notice; or

- (d) the Local Court varies the notice so that the use is not prohibited.

Penalty: In the case of a body corporate – \$50 000 and \$3 000 for each day during which the offence continues.

In the case of a natural person – \$10 000 or imprisonment for 6 months and \$1 000 for each day during which the offence continues.

- (3) In this section, **plant** includes a vehicle, building and structure.

24 Competent Authority may give improvement notice

- (1) The Competent Authority may give an improvement notice to a person where he or she reasonably believes that the person:

- (a) is contravening this Act or the Regulations; or
- (b) has contravened this Act or the Regulations in circumstances that make it likely that the contravention will be repeated.

- (2) An improvement notice is to:

- (a) be in writing;
- (b) state the name of the person to whom the notice is directed;
- (c) state that the Competent Authority reasonably believes that the person:
 - (i) is contravening this Act or the Regulations; or
 - (ii) has contravened this Act or the Regulations in circumstances that make it likely that the contravention will be repeated;
- (d) state the grounds on which the belief is based;
- (e) specify the provision of this Act or the Regulations in respect of which the belief is based; and
- (f) specify the day, being not earlier than 7 days after the giving of the notice, by which the person must:
 - (i) remedy the contravention; or
 - (ii) remedy matters or activities giving rise to the circumstances that make it likely that the contravention will be repeated.

- (3) The Competent Authority may include in an improvement notice instructions as to the measures to be taken to remedy the contravention, or matters or activities, to which the notice relates.
- (4) An instruction under subsection (3) may:
 - (a) refer to a code of practice; and
 - (b) offer the person to whom it is issued a choice of ways in which to remedy the contravention, or matters or activities, to which the notice relates.
- (5) A person to whom an improvement notice is given must not contravene or fail to comply with the notice.

Penalty: In the case of a body corporate – \$50 000 and \$3 000 for each day during which the offence continues.

In the case of a natural person – \$10 000 or imprisonment for 6 months and \$1 000 for each day during which the offence continues.

25 Competent Authority may give further notice and carry out work

- (1) The Competent Authority may give a further notice to a person to whom an improvement notice has been given where the improvement notice requires work to be done and the work is not done.
- (2) A further notice may be given:
 - (a) where no appeal is lodged under section 28 against the improvement notice – within 7 days after the date specified in the improvement notice for the carrying out of the work; or
 - (b) where the Local Court has affirmed or varied the improvement notice or issued a notice in substitution for the improvement notice, and work is required to be done under the improvement notice – within 7 days after the date on which the decision of the Court was made known or within a longer or shorter period determined by the Court.
- (3) A further notice is to specify the date, being not earlier than 7 days after the giving of the further notice, after which the Competent Authority intends to carry out or cause to be carried out the work specified in the further notice.

- (4) The Competent Authority or a person authorised by the Competent Authority may, after the date specified in a further notice, enter on or in the premises, place or vehicle in relation to which the further notice was given with employees or agents and machinery reasonably necessary to carry out the work specified in the notice and may do all things reasonably necessary to be done to carry out the work.
- (5) The Competent Authority must not carry out or cause to be carried out work in relation to a further notice that is the subject of an appeal under section 28.
- (6) The cost reasonably incurred by the Competent Authority in exercising his or her powers under subsection (4) is a debt due and payable to the Territory by the person required to carry out the work by the improvement notice to which the further notice relates.
- (7) A certificate, purporting to be signed by the Competent Authority or an officer appointed under section 17(1), specifying details of the costs reasonably incurred in carrying out the work under subsection (1) is evidence of those costs.

26 Competent Authority may carry out work or cause work to be carried out

- (1) The Competent Authority may carry out or cause to be carried out work or repairs if the Competent Authority reasonably believes that:
 - (a) a dangerous situation exists;
 - (b) the work or repairs are necessary to repair damage or to minimise or avert damage or a risk that has resulted or is likely to result from the dangerous situation;
 - (c) the person in charge of the dangerous goods cannot be found; and
 - (d) either:
 - (i) the circumstances require immediate action or intervention; or
 - (ii) giving a prohibition notice or improvement notice to a person would not be appropriate.
- (2) For the purposes of subsection (1), the Competent Authority may:
 - (a) by his or her employees or agents, enter in or on premises or a place or vehicle with machinery necessary to carry out the work or repairs or remove property; or

- (b) authorise a person and the employees and agents of the person to enter in or on premises or a place or vehicle with machinery necessary to carry out the work or repairs or remove property.
- (3) The cost reasonably incurred by the Competent Authority in carrying out work under subsection (1) is a debt due and payable to the Territory.
- (4) A person in charge of dangerous goods involved in a dangerous situation and a person who caused or contributed to the dangerous situation are jointly and severally liable for the costs reasonably incurred by the Competent Authority in carrying out work under subsection (1).
- (5) A certificate, purporting to be signed by the Competent Authority or an officer appointed under section 17(1), specifying details of the costs reasonably incurred in carrying out the work under subsection (1) is evidence of those costs.

27 Giving of notices

A notice under section 22, 24 or 25 may be given to a person by:

- (a) delivering it personally to the person;
- (b) leaving it at the person's usual or last known place of residence or business with some other person, apparently resident or employed there and apparently in charge or in a position of authority;
- (c) sending it by registered post, addressed:
 - (i) in the case of a natural person – to the person's last-known place of business or residence; or
 - (ii) in the case of a body corporate – to its registered office in the Territory or otherwise as provided by the Corporations Law; or
- (d) where the notice relates to a vehicle, placing the notice securely on the vehicle in a conspicuous position.

28 Appeals against notices

- (1) A person to whom a notice under section 22, 24 or 25 is given may, within 7 days after the notice is given or a later time that the Local Court allows, appeal in writing to the Local Court against the notice.

- (2) Where an appeal is lodged against an improvement notice or a further notice, the operation of the notice is suspended until:
 - (a) the Court determines the appeal;
 - (b) the appeal is withdrawn; or
 - (c) the notice is revoked or suspended by the Competent Authority.
- (3) The Court must determine an appeal against a prohibition notice, an improvement notice or a further notice:
 - (a) by affirming the notice;
 - (b) by varying the notice;
 - (c) by substituting its own notice for the notice given by the Competent Authority; or
 - (d) by revoking the notice.
- (4) A notice as affirmed, varied or substituted under subsection (3) comes into operation:
 - (a) on the date on which it is affirmed, varied or substituted; or
 - (b) on a later date specified by the Court.

Part 6 Miscellaneous

Division 1 Legal Proceedings

29 Consent to prosecutions

A prosecution cannot be instituted in respect of an offence against this Act or the Regulations without the written consent of the Competent Authority.

30 Time limits

Proceedings against a person in respect of an offence against this Act or the Regulations cannot be instituted after 3 years from the date of the alleged offence or the discovery of the alleged offence, whichever is the later.

31 Averments

In proceedings in respect of an offence against this Act or the Regulations, an averment in the information or complaint that:

- (a) a specified person is the Competent Authority or an officer;
- (b) a specified person was or was not on a specified day a licensee;
- (c) a specified licence contained specified conditions;
- (d) a specified substance or thing was at a specified time dangerous goods;
- (e) a specified container did on a specified day contain dangerous goods;
- (f) specified dangerous goods, being dangerous goods specified in a shipping document carried in or on a vehicle, were transported in or on the vehicle;
- (g) specified dangerous goods are dangerous goods of a specified class or kind; or
- (h) a specified document is a code of practice in force at a specified time,

is evidence of the fact alleged.

32 Liability of employers, &c.

- (1) Where an employee or agent:
 - (a) engages in conduct on behalf of another person within the scope of his or her authority; and
 - (b) the conduct constitutes an offence against this Act or the Regulations,

then the other person is guilty of the same offence and is liable to the same penalty.

- (2) Proceedings may be instituted against the other person notwithstanding that the employee or agent has not been charged with the offence.

- (3) It is a defence to a prosecution for an offence referred to in subsection (1) that the other person charged:
- (a) did not authorise or permit the commission of the offence by the employee or agent; or
 - (b) took reasonable precautions and used due diligence to prevent the commission of the offence or an offence of the same or similar nature.

33 Conduct of directors, &c., of bodies corporate

- (1) Where in proceedings under this Act or the Regulations it is necessary to establish the intent of a body corporate, it is sufficient to show that a director, employee or agent of the body corporate had that intention.
- (2) A person who is a director, or who is involved in the management, of a body corporate that has committed an offence against this Act or the Regulations is guilty of the same offence and is liable to the same penalty.
- (3) Proceedings may be instituted against the person notwithstanding that the body corporate has not been charged with the offence.
- (4) It is a defence to a prosecution for an offence referred to in subsection (2) that the person:
- (a) was not in a position to influence the conduct of the body corporate in relation to the offence; or
 - (b) took reasonable precautions and used due diligence to prevent the commission of the offence.

34 Repeated offences and prohibition from handling dangerous goods

- (1) Where a person is found guilty of an offence against this Act or the Regulations, the court may, in addition to any other penalty, order that the person be prohibited for a specified period from being involved generally in, or in relation to specific aspects of, the handling of dangerous goods.
- (2) When making an order under subsection (1), the court must take into account:
- (a) the person's record in relation to dangerous goods;
 - (b) the prior convictions of the person that relate to the handling of dangerous goods;

- (c) the circumstances surrounding the commission of the offence for which the person is being sentenced; and
 - (d) other matters the court thinks fit.
- (3) A person must not contravene or fail to comply with an order under subsection (1).

Penalty: In the case of a body corporate – \$250 000.

In the case of a natural person – \$50 000 or imprisonment for 2 years.

35 Forfeiture, &c., of dangerous goods

Where a person is found guilty of an offence against this Act or the Regulations, the court may order:

- (a) the dangerous goods in respect of which the offence was committed to be forfeited to the Territory; and
- (b) the person to pay to the Territory the costs and expenses incurred in the seizure, detention and removal of the dangerous goods or the package, container or vehicle, as the case may be, in which the dangerous goods were contained or kept when seized, detained or removed.

36 Disposal of forfeited goods

- (1) The Competent Authority may dispose of, destroy or render safe or otherwise deal with dangerous goods forfeited to the Territory under section 35 in the manner that he or she thinks fit.
- (2) The cost of disposing of, destroying or rendering safe dangerous goods under subsection (1) is a debt due and payable to the Territory by the person found guilty of the offence referred to in section 35.
- (3) A certificate, purporting to be signed by the Competent Authority or an officer appointed under section 17(1), specifying the cost of disposing of, destroying or rendering safe specified dangerous goods under subsection (1) is evidence of the cost.

Division 2 Codes of practice and regulations

37 Codes of practice

- (1) The Minister may, on the recommendation of the Competent Authority, by notice in the *Gazette*, approve a code of practice for the purpose of providing practical guidance on a matter relating to this Act or the Regulations.
- (2) A code of practice may consist of a code, standard, rule, specification or provision relating to a matter in this Act formulated, prepared or adopted by the Competent Authority and may apply, incorporate or refer to a document formulated or published by a body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.
- (3) A notice under subsection (1) is to indicate:
 - (a) where a copy of the code of practice to which it relates, and all documents applied, incorporated or referred to in the code, may be inspected by members of the public without charge; and
 - (b) the times during which it may be inspected.
- (4) The Competent Authority is to make a code and documents referred to in a notice under subsection (3) available in accordance with the notice.
- (5) The Competent Authority may approve in writing, in relation to a particular place, premises or vehicle where or in or on which dangerous goods are handled, a code of practice presented to him or her by a person in charge of the dangerous goods.
- (6) Subject to subsections (7) and (8), a code of practice approved under subsection (5) prevails over a code of practice approved under subsection (1) in relation to that place, premises or vehicle.
- (7) The Competent Authority must not approve a code of practice under subsection (5) that, in his or her opinion, adopts standards less stringent than the minimum relevant standards for the time being in a code of practice approved under subsection (1).
- (8) Where there is:
 - (a) a relevant standard in a code of practice approved under subsection (1) that is more stringent than a standard in a code of practice approved under subsection (5); or

- (b) a relevant standard in a code of practice approved under subsection (1) in relation to a matter that is not provided for in a code of practice approved under subsection (5),

that standard in the code of practice approved under subsection (1) is to prevail or apply, as the case may be, and is to be taken to be incorporated in the code of practice approved under subsection (5).

- (9) The person in charge of dangerous goods must make a code of practice approved under subsection (5) in relation to the dangerous goods available for inspection at all reasonable times by a person involved in the handling of the dangerous goods.

Penalty: \$2 000.

- (10) An offence against subsection (9) is a regulatory offence.
- (11) A person is not liable to a civil or criminal action by reason only that he or she has failed to observe a provision of a code of practice.

38 Use of codes of practice in proceedings

- (1) A person does not commit an offence against this Act or the Regulations if the act or omission alleged to constitute the offence or an element of the offence was done or omitted to be done in compliance with a code of practice relating to the act or omission.
- (2) Where, in a prosecution for an offence against a provision of this Act or the Regulations, it is proved that the act or omission alleged to constitute the offence or an element of the offence was done or omitted to be done in contravention of a code of practice relating to the act or omission, the offence or the element is to be taken to be proved unless the court is satisfied that the defendant complied with the provision otherwise than by compliance with the code of practice.

39 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting subsection (1), the Regulations may make provision for or with respect to:
- (a) the handling of dangerous goods and containers that are used in connection with dangerous goods, including the precautions to be observed and the methods of handling to be employed;
 - (b) the classification of dangerous goods and methods for determining classifications;
 - (c) the competency or qualifications of persons:
 - (i) handling dangerous goods; or
 - (ii) manufacturing, designing, installing, repairing or carrying out any work on containers, pipelines or any plant or things that are used or are intended for use in connection with dangerous goods,and the registering, certifying and licensing of those persons;
 - (d) the exemption of persons, places, premises, vehicles, activities or specified dangerous goods from the application of all or part of this Act or the Regulations;
 - (e) the design, construction, manufacture, installation, cleanliness, ventilation, venting, marking, placarding, labelling and maintenance of places, premises, plant, vehicles, containers, pipelines and other things that are used or intended for use in the handling of dangerous goods;
 - (f) the siting, design, construction, ventilation, venting, illumination, maintenance, fittings, fixtures and management of premises, plant, buildings and structures that are used, or are intended for use, in connection with dangerous goods and the treatment of premises, plant, buildings and structures no longer required for the handling of dangerous goods;
 - (g) the provision, maintenance, testing and use of safety and first aid facilities at a place, on premises or in or on a vehicle used for any purpose in connection with dangerous goods;
 - (h) the inspection, examination and testing of dangerous goods and equipment that is, or is intended to be, used in connection with dangerous goods and the fees payable for the inspection, examination or testing;
 - (j) the driving of vehicles conveying dangerous goods, including the types of vehicles that can convey, and the procedures for conveying, specified classes of dangerous goods;

- (k) the making, keeping, production and inspection of records relating to dangerous goods and the providing of returns and other information relating to dangerous goods;
- (m) the notice to be given of:
 - (i) theft of dangerous goods from a place, premises or vehicle;
 - (ii) theft in connection with dangerous goods at a place, on premises or in or on a vehicle; and
 - (iii) dangerous situations and other accidents during the handling of or in connection with dangerous goods at a place, on premises or in or on a vehicle;
- (n) the procedures to be taken and the holding of inquiries in relation to thefts, accidents and situations referred to in paragraph (m);
- (p) the establishment, management and use of magazines and government explosives reserves;
- (q) the granting of licences by the Competent Authority to handle dangerous goods and the conditions to which a licence is to be subject;
- (r) the notification and registration of places, premises and vehicles where dangerous goods are or are to be handled, including different categories of notification and registration, and the conditions and requirements to which notification and registration is to be subject;
- (s) the payment of a prescribed amount in lieu of a penalty that may otherwise be imposed for an offence against this Act or for a breach of the Regulations;
- (t) the service of notices on persons alleged to have infringed this Act or breached the Regulations and particulars to be included in such notices;
- (u) the forms to be used; and
- (w) the fees payable in respect of any act, matter or thing under this Act.

- (3) The Regulations may impose penalties for a breach of the Regulations not exceeding:
- (a) in the case of a body corporate – \$25 000 or \$1 500 for each day during which the breach continues; and
 - (b) in the case of a natural person – \$5 000 or \$300 for each day during which the breach continues.
- (4) The Regulations may:
- (a) provide that an act or thing is to be done or be in accordance wholly or partly with the approval or to the satisfaction of a prescribed person or a person of a prescribed class of persons;
 - (b) confer on a prescribed person, or class of persons, a discretionary authority; and
 - (c) confer on a prescribed person, or class of persons, power to give, in a prescribed manner, instructions, orders, directions or requirements.
- (5) The Regulations may incorporate or adopt by reference the provisions of a document, standard, rule, specification or method formulated, issued, prescribed or published by an authority or a body:
- (a) in whole or in part, or as amended by the Regulations;
 - (b) as formulated, issued, prescribed or published at the time the Regulations are made or at any time before then; or
 - (c) as amended after the making of the Regulations, but only where the Minister has published in the *Gazette* a notice that the particular amendment is to be incorporated in the Regulations.

Part 7 Repeal, savings and transitional

40 Definition

In this Part, ***repealed Act*** means the *Dangerous Goods Act* as repealed by section 41.

41 Repeal

- (1) Subject to subsection (2) and section 42(1), the *Dangerous Goods Act 1980* (No. 4, 1981) and the *Dangerous Goods Act 1983* (No. 1, 1983) are repealed.
- (2) Sections 27, 28 and 29 of the repealed Act are repealed or are to be taken to have been repealed on the commencement of the *Waste Management and Pollution Control Act 1997*.

42 Savings and transitional

- (1) A person who was, immediately before the commencement of section 41, an inspector appointed under section 8(1)(c) of the repealed Act is, on that commencement, to be taken to be an officer appointed under section 17(1).
- (2) A declaration or classification of dangerous goods under section 13(1)(a) or (b) of the repealed Act that was in force immediately before the commencement of this Act is, on that commencement, to be taken to be a declaration or classification of dangerous goods under section 6(1)(a) or (b), respectively.
- (3) A licence granted under the repealed Act that was in force immediately before the commencement of this Act remains in force under the Regulations for the period and subject to the conditions applicable to the licence under the repealed Act as if the licence was granted under the Regulations subject to those conditions.
- (4) A licence referred to in subsection (3) may be renewed, varied or cancelled under the Regulations.
- (5) A standard, rule, code, specification or guide adopted by the Regulations under section 51(5) of the repealed Act and in force immediately before the commencement of this Act is to be taken to be a document, standard, rule, specification or method, as the case may be, incorporated or adopted by reference under section 39(5).
- (6) A certificate specifying the cost of the disposal of dangerous goods issued under section 11(8) of the repealed Act and in force immediately before the commencement of this Act is to be taken to be a certificate issued under section 21(4).
- (7) A certificate specifying the cost of the disposal of forfeited goods issued under section 47(3) of the repealed Act and in force immediately before the commencement of this Act is to be taken to be a certificate issued under section 36(3).

43 Saving of regulations under repealed Act

Regulations in force under the repealed Act immediately before the date on which this Act comes into operation remain in force as if they were regulations made under this Act and may be amended or repealed by regulations made under this Act.

ENDNOTES

1

KEY

Key to abbreviations

amd = amended
 app = appendix
 bl = by-law
 ch = Chapter
 cl = clause
 div = Division
 exp = expires/expired
 f = forms
 Gaz = Gazette
 hdg = heading
 ins = inserted
 lt = long title
 nc = not commenced

od = order
 om = omitted
 pt = Part
 r = regulation/rule
 rem = remainder
 renum = renumbered
 rep = repealed
 s = section
 sch = Schedule
 sdiv = Subdivision
 SL = Subordinate Legislation
 sub = substituted

2

LIST OF LEGISLATION

Dangerous Goods Act 1998 (Act No. 23, 1998)

Assent date 30 March 1998
 Commenced 18 August 2004 (*Gaz G33*, 18 August 2004, p 5)

Dangerous Goods Act 1998 Amendment Act 2003 (Act No. 20, 2003)

Assent date 29 May 2003
 Commenced 18 August 2004 (*Gaz G33*, 18 August 2004, p 5)

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LIST OF AMENDMENTS

s 3 amd No. 20, 2003, s 4
 s 4 amd No. 20, 2003, s 5
 s 43 ins No. 20, 2003, s 6