



New South Wales

Dangerous Goods (Road and Rail Transport) Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to regulate the transport of dangerous goods by road and rail as part of a national scheme and to enable regulations to be made containing the regulatory scheme. The Bill repeals and replaces the *Road and Rail Transport (Dangerous Goods) Act 1997*.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 sets out the purpose of the proposed Act which is to regulate the transport of dangerous goods by road and rail in order to promote public safety and protect property and the environment.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 provides that the proposed Act will not apply to dangerous goods that are, or form part of, personal safety equipment of persons in a vehicle transporting dangerous goods, or that are in a container that is part of the fuel or battery system of a vehicle's engine or other equipment. This clause also provides that the *Radiation Control Act 1990* and any other laws relating to the storage and handling of dangerous goods (but not relating to the transport of dangerous goods by road or rail) will prevail over the proposed Act.

Part 2 Licensing and safety obligations

Clause 6 creates the following offences relating to the licensing of vehicles involved in the transport of dangerous goods by road or rail:

- (a) prohibiting a prime contractor from using a vehicle to transport dangerous goods by road or rail (other than as the driver of the vehicle) if the regulations require the vehicle to be licensed to transport the goods and that vehicle is not so licenced (maximum penalty 500 penalty units (currently \$55,000) or imprisonment for 2 years, or both, for an individual or 2,500 penalty units (currently \$275,000) for a body corporate),
- (b) prohibiting a person from consigning dangerous goods for transport by road on a vehicle without a licence if the person knows or reasonably ought to know that the regulations require the vehicle to be licensed to transport the goods and that vehicle is not so licenced (maximum penalty 500 penalty units (currently \$55,000) or imprisonment for 2 years, or both, for an individual or 2,500 penalty units (currently \$275,000) for a body corporate),
- (c) prohibiting a person from driving a vehicle transporting dangerous goods by road or rail if the person knows or reasonably ought to know that the regulations require the vehicle to be licensed and the vehicle is not so licensed (maximum penalty 100 penalty units (currently \$11,000)).

Clause 7 creates the following offences relating to the licensing of drivers involved in the transport of dangerous goods by road or rail:

- (a) prohibiting a person from employing, engaging, causing or permitting another person to drive a vehicle transporting dangerous goods by road or rail if the other person is required by the regulations to be licensed to drive the vehicle and the person is not so licensed (maximum penalty 500 penalty units (currently \$55,000) or imprisonment for 2 years, or both, for an individual or 2,500 penalty units (currently \$275,000) for a body corporate),
- (b) prohibiting a person from driving a vehicle transporting dangerous goods by road or rail if the regulations require the person to be licensed to drive the vehicle and the person is not so licensed (maximum penalty 100 penalty units (currently \$11,000)).

Clause 8 makes it an offence to consign, or arrange the transport of, goods that the regulations identify as being too dangerous to transport (maximum penalty 500 penalty units (currently \$55,000) or imprisonment for 2 years, or both, for an individual or 2,500 penalty units (currently \$275,000) for a body corporate).

Clause 9 makes it an offence to fail to ensure that dangerous goods are transported in a safe manner or to fail to comply with a provision of the proposed Act where the person knows or reasonably ought to know that the failure would be likely to endanger the safety of another person or of property or the environment. The maximum penalty for the offences under the proposed section is 500 penalty units (currently \$55,000) or imprisonment for 2 years, or both, for an individual or 2,500 penalty units (currently \$275,000) for a body corporate.

Clause 10 creates a similar offence with higher penalties if the conduct concerned caused the death or serious injury of another person. Specifically, the proposed section provides that a person:

- (a) whose conduct causes the death or serious injury of another person, and
- (b) who owes a duty under proposed section 9 when engaging in that conduct, and
- (c) who is reckless as to the danger of death or serious injury to any person that arises from that conduct,

is guilty of an offence.

The offence carries a maximum penalty of 1,000 penalty units (currently \$110,000) or imprisonment for 4 years, or both, for an individual or 5,000 penalty units (currently \$550,000) for a body corporate.

Clause 11 provides for a special defence to prosecutions for an offence against the proposed Act or the regulations for owners and operators of vehicles transporting dangerous goods. A person who is such an owner or operator will not be guilty of the offence if the person establishes that the vehicle was being used at the relevant time by:

- (a) another person not entitled (whether by express or implied authority or otherwise) to use it, other than an employee or agent of the alleged offender, or
- (b) an employee of the alleged offender who was acting at the relevant time outside the scope of the employment, or
- (c) an agent (in any capacity) of the alleged offender who was acting at the relevant time outside the scope of the agency.

Clause 12 provides that a director or person concerned in the management of a corporation is liable for offences committed by the corporation unless they show they were not in a position to influence the conduct of the corporation or, if in such a position, used all due diligence to prevent the offence.

Part 3 Regulations

Clause 13 provides that the Governor may make regulations on a wide range of matters required or permitted to be prescribed by the proposed Act or that are

necessary or convenient to be prescribed. The clause sets out a number of particular matters in relation to which regulations may be made, including the identification, classification, labelling, packaging, stowage and transport of dangerous goods, mandatory licensing of persons involved in the transport of dangerous goods and obligations arising in an emergency. The regulations made under the proposed section will contain the regulatory scheme for the transport of dangerous goods by road or rail.

Clause 14 provides that the regulations may apply, adopt and incorporate codes, standards and rules relating to dangerous goods or to transport by road or rail.

Clause 15 enables the regulations to create offences for breach of the regulations with maximum penalties of 60 penalty units (currently \$6,600) for an individual or 300 penalty units (currently \$33,000) for a body corporate.

Part 4 Administration

Division 1 Competent Authorities and their authorised officers

Clause 16 provides that the Environment Protection Authority and the WorkCover Authority are the Competent Authorities for the purposes of the proposed Act. The Competent Authorities are to be responsible for the administration and enforcement of the proposed Act and the regulations.

Clause 17 states that a Competent Authority may appoint a person to be an authorised officer. A Competent Authority may specify that such an appointment is subject to conditions or restrictions and may issue an identification card for a person appointed as an authorised officer.

Clause 18 requires authorised officers, who are not police officers, to carry identification cards while carrying out their duties and, if requested to do so by any person affected by the exercise of a function by an authorised officer under the proposed Act, produce the officer's identification card to the person.

Clause 19 makes it an offence for a person who has been issued with an identification card not to return it as soon as practicable after ceasing to be an authorised officer. The offence carries a maximum penalty of 10 penalty units (currently \$1,100).

Clause 20 empowers a Competent Authority to delegate his or her powers under the proposed Act to authorised officers or any person, or any class of persons, authorised for the purposes of the proposed section by the regulations.

Division 2 Powers of authorised officers

Clause 21 provides that the investigative functions of authorised officers under Chapter 7 and section 319A of the *Protection of the Environment Operations Act 1997* are conferred on authorised officers appointed by the Environment Protection Authority for the purposes of exercising functions under the proposed Act.

Clause 22 provides that the investigative functions of inspectors under Division 2 of Part 5 of the *Occupational Health and Safety Act 2000* are conferred on authorised officers appointed by the WorkCover Authority for the purposes of exercising functions under the proposed Act.

Clause 23 makes it an offence for a person to:

- (a) obstruct, hinder or impede any authorised officer or a person assisting an authorised officer in the exercise of the officer's functions under the proposed Act, or
- (b) intimidate or threaten or attempt to intimidate any authorised officer in the exercise of the officer's functions under the proposed Act.

The offence carries a maximum penalty of 100 penalty units (currently \$11,000) or imprisonment for 6 months, or both, for an individual or 500 penalty units (currently \$55,000) for a body corporate.

Clause 24 makes it an offence for a person to impersonate, or falsely represent that the person is, an authorised officer. The offence carries a maximum penalty of 100 penalty units (currently \$11,000).

Clause 25 provides for the exercise of the powers of authorised officers of other jurisdictions in this State and the exercise of powers in other jurisdictions by authorised officers appointed under the proposed Act.

Part 5 Investigation, improvement and prohibition notices

Division 1 Investigation notices

Clause 26 authorises an authorised officer who has exercised any power under proposed Part 4 to issue an investigation notice to a person if the authorised officer believes on reasonable grounds that it is necessary to issue the notice in order to facilitate the exercise of the authorised officer's powers under that Part.

Clause 27 makes it an offence, while an investigation notice is in force, for the person to whom the notice is issued to fail to:

- (a) stop the use or movement of, or interference with, any substance or thing that is specified in the notice, and
- (b) take measures to prevent the disturbance of any substance or thing that is specified in the notice, or any specified area in which it is located.

The offence carries a maximum penalty of 100 penalty units (currently \$11,000) or imprisonment for 6 months, or both, for an individual or 500 penalty units (currently \$55,000) for a body corporate.

Division 2 Improvement notices

Clause 28 provides that if an authorised officer is of the opinion that any person:

- (a) is contravening any provision of the proposed Act or the regulations, or
- (b) is likely to contravene such a provision, or
- (c) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated,

the authorised officer may issue to the person a notice requiring the person to remedy the contravention or the matters occasioning it within the period specified in the notice (being a reasonable period for the person to comply with the requirements imposed by the notice).

Clause 29 provides that a person who, without reasonable excuse, fails to comply with a requirement imposed by an improvement notice is guilty of an offence that carries a maximum penalty of 100 penalty units (currently \$11,000) or imprisonment for 6 months, or both, for an individual or 500 penalty units (currently \$55,000) for a body corporate.

Division 3 Prohibition notices

Clause 30 provides that if an authorised officer is of the opinion that there is occurring or about to occur any dangerous activity, the authorised officer may issue to the person who has or may be reasonably presumed to have control over the activity a notice prohibiting the carrying on of the activity until the authorised officer has certified in writing that the activity is not or is no longer a dangerous activity.

Clause 31 provides that a person who, without reasonable excuse, fails to comply with a requirement imposed by a prohibition notice is guilty of an offence that carries a maximum penalty of 100 penalty units (currently \$11,000) or imprisonment for 6 months, or both, for an individual or 500 penalty units (currently \$55,000) for a body corporate.

Division 4 General provisions relating to notices

Clause 32 provides that if:

- (a) an authorised officer believes on reasonable grounds that there is occurring or about to occur any dangerous activity, and
- (b) either:
 - (i) a person to whom a notice under proposed section 28 (an improvement notice) or 30 (a prohibition notice) has been given has not complied with the notice, or
 - (ii) giving such a notice to a person would not be appropriate to avert, eliminate or minimise the danger,

the authorised officer may take or cause to be taken any action the authorised officer believes on reasonable grounds to be necessary to avert, eliminate or minimise the danger.

Clause 33 provides that an authorised officer may include in a notice under the proposed Part directions as to the measures to be taken to remedy any contravention or matter to which the notice relates or to otherwise comply with the notice.

Clause 34 provides that a person who is issued with a notice under the proposed Part may apply in writing to the relevant Competent Authority for a review of the notice and the Competent Authority is to undertake the review.

Clause 35 provides that a person who is not satisfied with the result of such a review of a notice may appeal against the notice to:

- (a) in the case of a review by the Environment Protection Authority—the Land and Environment Court, or
- (b) in the case of a review by the WorkCover Authority—a Local Court constituted by an Industrial Magistrate sitting alone.

The court to which an appeal is made may, on the appeal, confirm the notice, vary it or revoke it.

Clause 36 provides a process to apply for the stay of certain notices while under review.

Clause 37 deals with the withdrawal of notices.

Clause 38 makes it clear that the revocation or withdrawal of a notice under the proposed Part does not prevent the issue of any other notice.

Clause 39 deals with the service of notices.

Clause 40 provides that an authorised officer may cause a notice containing a copy of or extract from a notice under the proposed Part, or of the matter contained in the notice, to be exhibited at a place of work or on a vehicle concerned in a manner approved by the Competent Authority. It will be an offence for a person to destroy, damage or remove a notice so exhibited except with the approval of the Competent Authority or an authorised officer (maximum penalty 20 penalty units (currently \$2,200) for an individual or 100 penalty units (currently \$11,000) for a body corporate).

Clause 41 provides that the issue, variation, revocation or withdrawal of a notice under the proposed Part does not affect any proceedings for an offence against the proposed Act or the regulations in connection with any matter in respect of which the notice was issued.

Part 6 Exemptions

Clause 42 enables a Competent Authority to grant an exemption to a person or class of persons from compliance with a provision of the regulations. Failure to comply with a condition in an exemption is an offence that carries a maximum penalty of 100 penalty units (currently \$11,000) or imprisonment for 6 months, or both, for an individual or 500 penalty units (currently \$55,000) for a body corporate. The proposed section also details various procedural and formal requirements relating to exemptions.

Clause 43 deals with the cancellation and variation of exemptions and conditions.

Clause 44 provides for the internal review of certain decisions relating to exemptions made by a Competent Authority.

Clause 45 provides that a person who is not satisfied with the result of such an internal review may appeal against the notice to:

- (a) in the case of a review by the Environment Protection Authority—the Land and Environment Court, or
- (b) in the case of a review by the WorkCover Authority—a Local Court constituted by an Industrial Magistrate sitting alone.

The court to which an appeal under this section is made may, on the appeal, confirm the notice, vary it or revoke it.

Clause 46 provides that the Minister administering the proposed Act may order a suspension or variation of the regulations or specified parts of the regulations.

Part 7 Criminal and other proceedings

Division 1 Proceedings for offences generally

Clause 47 sets out the courts in which proceedings for offences under the proposed Act may be brought and the time within which such proceedings must be brought.

Clause 48 deals with the issuing and serving of penalty notices for offences against the proposed Act and the regulations.

Division 2 Court orders in connection with offences

Clause 49 provides that the proposed Division applies where a court finds that a person has committed an offence against the proposed Act or the regulations (*the offender*) and contains interpretation provisions.

Clause 50 contains machinery provisions.

Clause 51 enables a court to order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount the court is satisfied, on the balance of probabilities, represents 3 times the amount of any monetary benefits that:

- (a) was received or receivable, by the person or by an associate of the person, from the commission of the offence, and
- (b) in the case of a journey that was interrupted or not commenced because of action taken by an authorised officer in connection with the commission of the offence—would have been received or receivable, by the person or by an associate of the person, from the commission of the offence had the journey been completed.

Clause 52 enables a court that finds the driver of a vehicle guilty of an offence to order either or both of the following:

- (a) that a licence the driver is required to have by the regulations is:
 - (i) cancelled, or
 - (ii) modified or suspended for a specified period,
- (b) that the driver is disqualified for a specified period from obtaining or holding a licence a person is required to have by the regulations.

Clause 53 enables the court, if it considers an offender to be a systematic or persistent offender against the proposed Act or the regulations, to make a supervisory intervention order relating to the offender requiring the offender (at the offender's own expense and for a specified period not exceeding one year) to do any or all of the following:

- (a) to do specified things that the court considers will improve the offender's compliance with the proposed Act or the regulations or specified provisions of the proposed Act or the regulations, including (for example) the following:
 - (i) appointing or removing staff to or from particular activities or positions,
 - (ii) training and supervising staff,
 - (iii) obtaining expert advice as to maintaining appropriate compliance,
 - (iv) installing monitoring, compliance, managerial or operational equipment (including, for example, intelligent transport system equipment),
 - (v) implementing monitoring, compliance, managerial or operational practices, systems or procedures,
- (b) to conduct specified monitoring, compliance, managerial or operational practices, systems or procedures subject to the direction of the Competent Authority or a person nominated by the Competent Authority,
- (c) to furnish compliance reports to the Competent Authority or the court or both as specified in the order,
- (d) to appoint a person to have responsibilities:
 - (i) to assist the offender in improving compliance with the proposed Act and the regulations or specified provisions of the proposed Act or the regulations, and
 - (ii) to monitor the offender's performance in complying with this or specified provisions of the proposed Act and the regulations and in complying with the requirements of the order, and
 - (iii) to furnish compliance reports to the Competent Authority or the court or both as specified in the order.

Clause 54 enables a court to order that an offender be prohibited for a specified period from involvement in the transport of dangerous goods by road or rail.

Clause 55 enables a court to order, in addition to imposing any other penalty imposed on the offender, that any dangerous goods related to the offence and their container to be forfeited to the Crown.

Clause 56 enables a court to order that the offender pay to certain public authorities and persons the costs and expenses incurred, or pay compensation for the loss or damage suffered, by the public authorities and persons as a result of the offence concerned.

Clause 57 enables a public authority or person to recover similar costs, expenses and compensation directly from the offender (after the offence is proved) by way of an action in the Land and Environment Court.

Clause 58 enables a court to order an offender to pay to a Competent Authority costs that:

- (a) were reasonably incurred in taking that action, and
- (b) are directly related to the investigation of the offence.

Those costs include costs for testing, transporting, storing and disposing of the dangerous goods and other evidence.

Division 3 General

Clause 59 contains evidentiary provisions.

Clause 60 contains evidentiary provisions dealing specifically with weighing.

Clause 61 deals with the admissibility of transport documentation.

Clause 62 deals with evidence relating to the appointment of authorised officers and purported signatures of authorised officers.

Clause 63 deals with the admissibility as evidence, and the treatment in proceedings, of codes of practice, guidelines or other documents approved by the Australian Transport Council.

Part 8 Miscellaneous

Clause 64 provides that the proposed Act binds the Crown.

Clause 65 protects an authorised officer from civil liability for acts or omissions done honestly and in good faith in the course of his or her duties.

Clause 66 restricts the disclosure of information obtained by persons in connection with the administration or execution of the proposed Act.

Clause 67 provides that any term of any contract or agreement that purports to exclude, limit or modify the operation of the proposed Act or the regulations or of any provision of the proposed Act or the regulations is void to the extent that it would otherwise have that effect.

Clause 68 enables a public authority that incurs costs as a result of an incident involving the escape of dangerous goods or an explosion or fire involving dangerous goods, or involving the danger of such an escape, explosion or fire, to recover so much of the costs as were reasonably incurred.

Clause 69 protects a person from civil liability for an act done honestly and in good faith and without any fee, charge or other reward, for the purpose of assisting or attempting to assist in a situation in which an emergency or accident involving dangerous goods occurs or is likely to occur.

Clause 70 requires the Minister administering the proposed Act to publish in the Gazette, as soon as practicable after a regulation is made, details of where any regulation, code, standard or rule applied or adopted by the regulation, or any amendment or replacement of the regulation, code, standard or rule, may be obtained or inspected.

Clause 71 empowers the Minister administering the proposed Act to delegate by instrument in writing to a Competent Authority all or any of the Minister's powers under the proposed Act (other than the power to make an application order or emergency order and the power of delegation).

Clause 72 gives effect to Schedule 1.

Clause 73 gives effect to Schedule 2.

Clause 74 is a formal provision that repeals the *Road and Rail Transport (Dangerous Goods) Act 1997*.

Clause 75 provides for the review of the proposed Act as soon as possible after the period of 5 years after the proposed Act is assented to.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains a formal provision that allows regulations of a savings or transitional nature to be made and another provision that saves the appointment of authorised officers appointed under the *Road and Rail Transport (Dangerous Goods) Act 1997*.

Schedule 2 Amendment of other Acts

Schedule 2 makes consequential amendments to the Acts set out in that Schedule.

More specifically, **Schedule 2.3** amends section 210 (Freedom from victimisation) of the *Industrial Relations Act 1996* to prohibit an employer or industrial organisation from victimising an employee or prospective employee because the employee or prospective employee has informed any person or body of, or given evidence in relation to, a breach or alleged breach of the proposed Act or the regulations under that Act (or a provision of a law of another State or Territory that corresponds to the proposed Act or the regulations).