



# **Dangerous Goods Safety Management Act 2001**

**Reprinted as in force on 31 December 2004**

**Reprint No. 2**

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The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Queensland

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# **Dangerous Goods Safety Management Act 2001**

[as amended by all amendments that commenced on or before 31 December 2004]

**An Act about the safe management in Queensland of the storage and handling of hazardous materials, particularly dangerous goods and combustible liquids, and the management of major hazard facilities and emergencies involving hazardous materials, and for other purposes**

## **Part 1                      Preliminary**

### **Division 1                Introduction**

#### **1                      Short title**

This Act may be cited as the *Dangerous Goods Safety Management Act 2001*.

#### **2                      Commencement**

This Act commences on a day to be fixed by proclamation.

### **Division 2                Application and operation of Act**

#### **3                      Application of Act**

- (1) This Act, other than part 7 and the other provisions of the Act relevant to that part, does not apply to—
- (a) a coal mine to which the Coal Act applies; or
  - (b) a mine to which the Mines Act applies; or

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- (c) land that, under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*, is used to obtain, produce or transport petroleum; or
  - (d) pipes under the *Petroleum and Gas (Production and Safety) Act 2004* (other than pipes within the boundaries of a major hazard facility or dangerous goods location).
- (2) If this Act conflicts with any of the following Acts, that Act prevails, but only to the extent of the conflict—
- (a) *Explosives Act 1999*;
  - (b) *Petroleum and Gas (Production and Safety) Act 2004*;
  - (c) *Radiation Safety Act 1999*.
- (3) If—
- (a) this Act imposes a safety obligation on a person; and
  - (b) the *Petroleum and Gas (Production and Safety) Act 2004*, the *Explosives Act 1999* or the *Radiation Safety Act 1999* imposes an obligation on the person or another person that is at least equivalent to the safety obligation;
- compliance with the obligation under the *Petroleum and Gas (Production and Safety) Act 2004*, the *Explosives Act 1999* or the *Radiation Safety Act 1999* is taken, for this Act, to be compliance with the safety obligation.
- (4) However, subsection (3) does not apply to safety obligations relating to a major hazard facility.

#### **4 Act binds all persons**

This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

#### **5 What does this Act apply to**

This Act applies to—

- (a) the storage and handling of hazardous materials, particularly dangerous goods and combustible liquids; and

- (b) the operation of major hazard facilities; and
- (c) the provision of advice and help for emergencies involving hazardous materials.

## **6 Who does this Act apply to**

Subject to section 3, this Act applies to everyone who as a result of the storage or handling of hazardous materials at a place may affect the safety of persons or harm property or the environment.

## **Division 3 Objective of Act**

### **7 Objective of Act**

- (1) The objective of this Act is to protect the safety of persons, and prevent harm to property and the environment, from hazardous materials.
- (2) More particularly, this Act—
  - (a) establishes requirements for—
    - (i) the safe storage and handling of dangerous goods and combustible liquids; and
    - (ii) the safe operation of major hazard facilities; and
  - (b) authorises the giving of advice and help in hazardous materials emergencies.

## **Division 4 Interpretation**

### **8 Definitions**

The dictionary in schedule 2 defines particular words used in this Act.

### **9 Meaning of *dangerous goods***

Goods are *dangerous goods* if they are defined under the ADG Code as—

- (a) dangerous goods; or
- (b) goods too dangerous to be transported.

## **10 Meaning of *environment***

The *environment* includes—

- (a) ecosystems and their constituent parts; and
- (b) all natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and
- (d) the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in paragraphs (a) to (c).

## **11 Meaning of *hazard***

A *hazard* is a thing or a situation with potential to cause harm to a person, property or the environment.

## **12 Meaning of *hazardous material***

- (1) A *hazardous material* is a substance with potential to cause harm to persons, property or the environment because of 1 or more of the following—
  - (a) the chemical properties of the substance;
  - (b) the physical properties of the substance;
  - (c) the biological properties of the substance.
- (2) Without limiting subsection (1), all dangerous goods, combustible liquids and chemicals are hazardous materials.

## **13 Meaning of *major accident***

*Major accident* means a sudden occurrence (including, in particular, a major emission, loss of containment, fire,

explosion or release of energy) leading to serious danger or serious harm to persons, property or the environment, whether immediate or delayed.

#### **14 Meaning of *occupier***

*Occupier*, of a major hazard facility, dangerous goods location, facility or other place, means an employer, or other person, who has overall management of the major hazard facility, dangerous goods location, facility or place.

#### **15 Meaning of *risk***

*Risk* means the likelihood of harm to a person, property or the environment arising out of a hazard.

## **Part 2 Safety obligations**

### **Division 1 Preliminary**

#### **16 Obligations for safety**

- (1) Everyone involved with the storage or handling of hazardous materials or with storage or handling systems at any place who may affect the safety of persons or may harm property at any place or the environment has the following obligations (*safety obligations*)—
  - (a) to comply with this Act;
  - (b) to take all reasonable precautions and care to achieve an acceptable level of risk.
- (2) In addition to their obligations under subsection (1), the following persons have obligations under division 2<sup>1</sup> (also *safety obligations*)—

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1 Division 2 (Obligations of occupiers and others)

- (a) the occupier of a major hazard facility or dangerous goods location;
  - (b) an employee or other person at a major hazard facility or dangerous goods location;
  - (c) a manufacturer, importer or supplier of dangerous goods;
  - (d) a designer, manufacturer, importer or supplier of storage or handling systems for use at a major hazard facility or dangerous goods location;
  - (e) an installer of storage or handling systems at a major hazard facility or dangerous goods location.
- (3) In addition to the obligations of the occupier of a major hazard facility under subsections (1) and (2), the occupier has the obligations under part 4<sup>2</sup> (also *safety obligations*).
- (4) In addition to the obligations of the occupier of a dangerous goods location under subsections (1) and (2), the occupier has the obligations under part 5<sup>3</sup> (also *safety obligations*).

## 17 What is an acceptable level of risk

- (1) An *acceptable level of risk* is achieved when risk is minimised as far as reasonably practicable.
- (2) To decide whether risk is minimised as far as reasonably practicable, regard must be had to—
  - (a) the likelihood of harm to a person, property or the environment related to the risk; and
  - (b) the severity of the harm.
- (3) The acceptable level of risk may be prescribed under a regulation in terms of the likelihood and the severity of the consequences of the risk or in another way.
- (4) The assessment of risk to decide its acceptability must take account of good industry practice and compliance with recognised standards if—

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2 Part 4 (Major hazard facilities)

3 Part 5 (Dangerous goods locations)

- (a) a regulation does not prescribe an acceptable level for risk or set performance objectives and measures for the avoidance, reduction or monitoring of risk; or
- (b) it is not practicable in the circumstances to calculate or estimate the level of risk.

## 18 Discharge of obligations

- (1) A person on whom a safety obligation is imposed must discharge the obligation.

Maximum penalty—

- (a) if the contravention causes multiple deaths and serious harm to property or the environment—3000 penalty units or 3 years imprisonment; or
  - (b) if the contravention causes multiple deaths—2000 penalty units or 3 years imprisonment; or
  - (c) if the contravention causes death or grievous bodily harm—1000 penalty units or 2 years imprisonment; or
  - (d) if the contravention involves exposure to a substance likely to cause death or grievous bodily harm—750 penalty units or 1 year's imprisonment; or
  - (e) if the contravention causes bodily harm—750 penalty units or 1 year's imprisonment; or
  - (f) if the contravention causes serious harm to property or the environment—750 penalty units or 6 months imprisonment; or
  - (g) if paragraphs (a) to (f) and subsection (3) do not apply—500 penalty units.
- (2) Subsection (3) applies if—
- (a) a person is alleged to have contravened subsection (1) (the *alleged offence*); and
  - (b) it is alleged the safety obligation the person did not discharge is the obligation to comply with this Act; and
  - (c) the provision of the Act (the *Act provision*) to which the failure relates provides for a penalty for a contravention of the Act provision; and

- (d) a circumstance of aggravation mentioned in paragraphs (a) to (f) of the penalty in subsection (1) is not proved for the alleged offence.
- (3) The maximum penalty that can be imposed for the alleged offence is the monetary penalty for the Act provision.

## **19 Person may owe obligations in more than 1 capacity**

A person on whom a safety obligation is imposed may be subject to more than 1 safety obligation.

*Example—*

A person may be both a designer of storage or handling systems and also the occupier of a major hazard facility and be subject to safety obligations in each capacity.

## **20 Person not relieved of obligations merely because other person has same obligations**

To remove doubt, it is declared that the imposition of a safety obligation on a person does not relieve another person of the other person's safety obligations under this Act.

## **21 How obligation can be discharged if regulation or recognised standard made**

- (1) If a regulation prescribes a way of achieving an acceptable level of risk, a person may discharge the person's safety obligation relating to the risk only by following the prescribed way.
- (2) If a regulation prohibits exposure to a risk, a person may discharge the person's safety obligation relating to the risk only by ensuring the prohibition is not contravened.
- (3) Subject to subsections (1) and (2), if a recognised standard states a way of achieving an acceptable level of risk, a person may discharge the person's safety obligation relating to the risk only by—
  - (a) adopting and following a stated way; or

- (b) adopting and following another way that achieves a level of risk equal to or lower than the acceptable level.<sup>4</sup>

## **22 How obligations can be discharged if no regulation or recognised standard made**

- (1) This section applies if there is no regulation or recognised standard prescribing or stating a way to discharge a person's safety obligation relating to a risk.
- (2) The person may choose an appropriate way to discharge the person's safety obligation relating to the risk.
- (3) However, the person discharges the person's safety obligation relating to the risk only if the person takes reasonable precautions, and exercises proper diligence, to ensure the obligation is discharged.

## **Division 2 Obligations of occupiers and others**

### **23 Obligations of occupiers**

- (1) The occupier of a major hazard facility or dangerous goods location has the following obligations—
  - (a) as far as practicable, to minimise the risk associated with the major hazard facility or dangerous goods location by—
    - (i) eliminating or minimising hazards at the facility or location; and
    - (ii) implementing measures to minimise the likelihood of a major accident at the facility or location; and
    - (iii) implementing measures to limit the consequences if a major accident happens at the facility or location;
  - (b) to ensure the safety of the occupier and employees while at the major hazard facility or dangerous goods location, including, for example, by providing and maintaining a

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<sup>4</sup> For this section and the following section, see defences provided under division 3.

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- safe place of work including safe storage or handling systems;
- (c) to record or be able to demonstrate the way the occupier has complied with the occupier's obligations under paragraphs (a) and (b);
  - (d) in consultation with the employees at the facility or location, to provide appropriate induction, information, supervision, education and training to all persons at the facility or location so that the persons may carry out their roles and duties safely;
  - (e) to develop, implement and maintain a safety management system for the facility or location.
- (2) The occupier of a major hazard facility or large dangerous goods location also has the following obligations—
- (a) in consultation with the employees at the facility or location, to establish, maintain and document emergency plans and procedures to—
    - (i) contain and control a hazardous materials emergency happening at the facility or location; and
    - (ii) minimise the effect of the emergency on persons, property and the environment;
  - (b) in consultation with the employees at the facility or location, to review and update emergency plans and procedures before any modification of the facility or location that would significantly alter the risk associated with the facility or location.

**24 Obligations of employees and other persons**

An employee or other person at a major hazard facility or dangerous goods location has the following obligations—

- (a) to comply with procedures applying to the employee or other person that are part of a safety management system for the facility or location;

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- (b) to comply with instructions given for the safety of persons by the occupier of the facility or location or a supervisor at the facility or location;
- (c) to report to a supervisor at the facility or location any matter at the facility or location that may lead to or cause a major accident;
- (d) to take any other reasonable and necessary course of action at the facility or location to ensure no-one is exposed to an unacceptable level of risk.

**25 Obligations of manufacturers, importers and suppliers of dangerous goods**

- (1) A manufacturer, importer or supplier of dangerous goods has the following obligations—
  - (a) to ensure the dangerous goods are in a condition that is safe for storage and handling;
  - (b) to ensure appropriate information about the safe storage and handling of the dangerous goods is provided with, or before the receipt of, the dangerous goods.
- (2) For subsection (1)(b), information is appropriate if the information clearly identifies the dangerous goods and states—
  - (a) the precautions to be taken for the safe storage and handling of the dangerous goods; and
  - (b) the hazards associated with the storage and handling of the dangerous goods.

**26 Obligations of designers, manufacturers, importers, suppliers and installers of storage or handling systems**

- (1) A designer or importer of a storage or handling system for use at a major hazard facility or dangerous goods location has an obligation to ensure the system is designed so that, when used properly, the risk to persons, property or the environment from the use of the system is at an acceptable level of risk.
- (2) A manufacturer or importer of a storage or handling system for use at a major hazard facility or dangerous goods location

has an obligation to ensure the system is constructed so that, when used properly, the risk to persons, property or the environment from the use of the system is at an acceptable level of risk.

- (3) A designer, manufacturer, importer or supplier of a storage or handling system for use at a major hazard facility or dangerous goods location must take all reasonable steps to ensure appropriate information about the safe use of the system is available to the occupier of the facility or location, including information about the maintenance necessary for the safe use of the system.
- (4) For subsection (3), information is appropriate if the information states—
  - (a) the use for which the storage or handling system has been designed and tested; and
  - (b) any conditions that must be complied with if the system is to be used safely so that risk to persons, property or the environment is at an acceptable level of risk.
- (5) An installer of a storage or handling system at a major hazard facility or dangerous goods location has an obligation to install the system in a way so that when the system is used properly, the risk to persons, property or the environment is at an acceptable level of risk.

## **27 Obligations of suppliers and installers for known hazards etc.**

- (1) This section applies to a person if the person—
  - (a) is a supplier or installer of a storage or handling system who becomes aware of a hazard or defect associated with the system that may create an unacceptable level of risk to users of the system; and
  - (b) has supplied the system to the occupier of, or has installed the system in, a major hazard facility or dangerous goods location for use at the facility or location.
- (2) A person to whom this section applies has an obligation to take all reasonable steps to inform the present occupier—

- (a) of the nature of the hazard or defect and its significance; and
- (b) any modifications or controls of which the person is aware that have been developed to eliminate or correct the hazard or defect or manage the risk.

## **Division 3                      Defences**

### **28            Defences for div 1 or 2**

- (1) It is a defence in a proceeding against a person for a contravention of a safety obligation imposed on the person under division 1 or 2 relating to a risk for the person to prove—
  - (a) if a regulation has been made about the way to achieve an acceptable level of risk—the person followed the way prescribed in the regulation to prevent the contravention; or
  - (b) subject to paragraph (a), if a recognised standard has been made stating a way to achieve an acceptable level of a risk—
    - (i) the person adopted and followed a stated way to prevent the contravention; or
    - (ii) the person adopted and followed another way that achieved a level of risk that is equal to or lower than the acceptable level to prevent the contravention; or
  - (c) if no regulation or recognised standard prescribes or states a way to discharge the person's safety obligation relating to the risk—that the person took reasonable precautions and exercised proper diligence to prevent the contravention.
- (2) Also, it is a defence in a proceeding against a person for an offence against section 18 for the person to prove that the commission of the offence was due to causes over which the person had no control.

- (3) The Criminal Code, sections 23 and 24,<sup>5</sup> do not apply to a contravention of section 18.<sup>6</sup>

## **Part 3                      Recognised standards**

### **29            Recognised standards**

- (1) The Minister may make standards (*recognised standards*) stating ways to achieve an acceptable level of risk.
- (2) The Minister must notify the making of a recognised standard.
- (3) A recognised standard takes effect—
  - (a) on the day the Minister’s notice is notified or published in the gazette; or
  - (b) if a later day is stated in the Minister’s notice or the standard—on that day.
- (4) The chief executive must keep a copy of each recognised standard and any document applied, adopted or incorporated by the standard available for inspection, without charge, during normal business hours at the department office dealing with the safety of hazardous materials.
- (5) The chief executive must, if asked, advise where a copy of a recognised standard may be obtained.
- (6) A notice mentioned in subsection (2) is subordinate legislation.

### **30            Use of recognised standard in proceedings**

A recognised standard is admissible in evidence in a proceeding under this Act if—

- (a) the proceeding relates to a contravention of a safety obligation imposed on a person under part 2; and

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5 Criminal Code, sections 23 (Intention—motive) and 24 (Mistake of fact)

6 Section 18 (Discharge of obligations)

- (b) it is claimed that the person contravened the obligation by failing to achieve an acceptable level of risk; and
- (c) the recognised standard is about achieving an acceptable level of risk.

## **Part 4                      Major hazard facilities**

### **Division 1                      Classification of facilities as major hazard facilities**

#### **31                      Meaning of *major hazard facility* and *possible major hazard facility***

- (1) A *major hazard facility* is a facility that is classified by the chief executive under this division as a major hazard facility.
- (2) A *possible major hazard facility* means either of the following facilities, other than a facility under a declaration under section 32(5)—
  - (a) a facility where a hazardous material is stored or handled if the quantity of the material is more than the quantity prescribed under a regulation;
  - (b) a facility that the occupier of the facility intends to use for the storage or handling of a hazardous material if the quantity of the material that is likely to be stored or handled is more than the quantity prescribed under a regulation.

#### **32                      Chief executive may classify facility as major hazard facility**

- (1) The chief executive may, after consultation with the occupier of a facility, by gazette notice, make a decision under section 33 classifying the facility as a major hazard facility.
- (2) The gazette notice must—

- (a) include a description of the area occupied by the major hazard facility; and
  - (b) indicate in broad terms the reasons for the classification.
- (3) Within 7 days after making the decision, the chief executive must give notice of the decision to the occupier.
- (4) The notice must—
- (a) include the reasons for the decision; and
  - (b) tell the occupier of the occupier's right of appeal against the decision and how to appeal.
- (5) If the chief executive decides not to make a decision under section 33 classifying the facility as a major hazard facility, the chief executive must declare, by written notice to the occupier of the facility, that the facility as described in the declaration is not a major hazard facility.

### **33 Grounds for classification**

- (1) The chief executive must classify a facility as a major hazard facility if the chief executive is reasonably satisfied that—
- (a) the quantity of hazardous materials stored or handled, or that is likely to be stored or handled, at the facility is more than the quantity prescribed under a regulation; and
  - (b) a hazardous materials emergency at the facility could pose a risk to persons, property or the environment outside the facility.
- (2) Also, the chief executive may classify a facility as a major hazard facility if the chief executive is reasonably satisfied that, having regard to both the following matters, the requirements applying under this Act for major hazard facilities should apply to the facility—
- (a) the potential for a hazardous materials emergency to come into existence at the facility;
  - (b) the extent to which a hazardous materials emergency at the facility would pose a risk to persons, property or the environment.

**34 Chief executive may declassify major hazard facility**

- (1) The chief executive may, after consultation with the occupier of a major hazard facility, by gazette notice, declassify the facility from its status as a major hazard facility if the chief executive reasonably considers grounds for the classification no longer exist.
- (2) A gazette notice under subsection (1) must—
  - (a) include a description of the area occupied by the facility being declassified; and
  - (b) indicate in broad terms the reasons for the declassification.
- (3) The chief executive must, by gazette notice, declassify a facility from its status as a major hazard facility if an appeal against the classification of the facility as a major hazard facility is successful.
- (4) The chief executive must give notice of the declassification to the occupier of the facility.

**Division 2 Notification to chief executive about possible major hazard facilities****35 Obligation to notify chief executive of existing possible major hazard facility**

- (1) This section applies to a possible major hazard facility that is operational at the commencement of this section.
- (2) The occupier of the facility must notify the chief executive about the facility as required by subsection (3) to allow the chief executive to decide whether the chief executive should classify the facility as a major hazard facility, unless the occupier has a reasonable excuse.

Maximum penalty—200 penalty units.

- (3) Notification under subsection (2) must—
  - (a) be in the approved form; and
  - (b) be given within 3 months after the commencement of this section.

**36 Obligation to notify chief executive of new possible major hazard facility**

- (1) This section applies to a possible major hazard facility that is not operational at the commencement of this section.
- (2) The occupier of the facility must notify the chief executive about the facility as required by subsection (3) to allow the chief executive to decide whether the chief executive should classify the facility as a major hazard facility, unless the occupier has a reasonable excuse.

Maximum penalty—200 penalty units.

- (3) Notification under subsection (2) must be in the approved form and must—
  - (a) for a facility that starts operations within 12 months after the commencement of this section, be given to the chief executive—
    - (i) if the facility starts operations within 2 months after the commencement—within 7 days after the commencement; or
    - (ii) otherwise—at least 2 months before the facility starts operations; or
  - (b) for a facility that starts operations more than 12 months after the commencement of this section, be given to the chief executive at least 6 months before the facility starts operations.

**37 Obligation to notify chief executive of certain upgrades of facilities**

- (1) This section applies to a facility, other than a major hazard facility, if there is a change in relation to the facility that involves any of the following—
  - (a) the facility becoming a possible major hazard facility;
  - (b) for a facility that is the subject of a declaration under section 32(5)—
    - (i) the quantity of hazardous materials stored or handled, or likely to be stored or handled, at the

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facility is more than the quantity stated in the declaration; or

- (ii) other hazardous materials, other than materials of the type stated in the declaration, are stored or handled, or likely to be stored or handled, at the facility.
- (2) If a facility is an upgraded facility, the occupier of the facility must notify the chief executive about the facility as required by subsection (3) to allow the chief executive to decide whether the chief executive should classify the facility as a major hazard facility, unless the occupier has a reasonable excuse.

Maximum penalty—200 penalty units.

- (3) Notification under subsection (2) must be in the approved form and must—
- (a) if the facility is upgraded within 12 months after the commencement of this section, be given to the chief executive—
    - (i) if the facility starts operations as an upgraded facility within 2 months after the commencement—within 7 days after the commencement; or
    - (ii) otherwise—at least 2 months before the facility starts operations as an upgraded facility; or
  - (b) if the facility is upgraded more than 12 months after the commencement of this section, be given to the chief executive at least 6 months before the upgraded facility starts operations.

- (4) In this section—

***upgraded facility*** means a facility that, as a result of a change in relation to the facility, is a facility of the type to which this section applies.

**38 Obligation to notify chief executive of modification to a major hazard facility**

Before the occupier of a major hazard facility undertakes modifications of the facility that will significantly alter the risk associated with the facility, the occupier must notify the chief executive about the modifications, unless the occupier has a reasonable excuse.

Maximum penalty—200 penalty units.

**39 Obligation to comply with chief executive's notice requiring information about possible major hazard facility**

- (1) This section applies to a facility if the chief executive—
  - (a) becomes aware of the presence, including the likely presence, of hazardous materials at the facility; and
  - (b) reasonably considers the facility may be classified as a major hazard facility under section 33.
- (2) The chief executive may, by notice given to the occupier of the facility, require the occupier to notify the chief executive in the approved form, within the time stated in the notice, of stated information about the facility to allow the chief executive to decide whether the chief executive should classify the facility as a major hazard facility.
- (3) The time stated in the notice must not be less than 14 days after the notice is given to the occupier.
- (4) The occupier must comply with the requirement, unless the occupier has a reasonable excuse.

Maximum penalty for subsection (4)—200 penalty units.

**Division 3 Other obligations of occupiers of major hazard facilities****40 Other obligations of occupier of major hazard facility**

- (1) The occupier of a major hazard facility has the obligations under this division.

- (2) These obligations are in addition to any other obligation imposed on the occupier of a major hazard facility under this Act.

#### **41 Occupier must carry out systematic risk assessment**

- (1) The occupier of a major hazard facility must, in consultation with the employees at the facility, carry out, document, review and update a systematic risk assessment that as far as practicable—
- (a) identifies all hazards that may lead to a major accident at the facility; and
  - (b) assesses the likelihood of a major accident happening at the facility and its effects if it does happen; and
  - (c) assesses the overall risk from the major hazard facility.
- (2) The systematic risk assessment must be carried out and documented—
- (a) for a facility classified as a major hazard facility within 12 months after the commencement of this section—within 4 months after classification; or
  - (b) for a facility classified as a major hazard facility more than 12 months after the commencement of this section—within 3 months after classification.
- (3) The systematic risk assessment for a major hazard facility must be reviewed and updated before the facility is modified in a way that significantly alters the risk associated with the facility.

#### **42 Emergency plans and procedures for major hazard facility**

For section 23(2)(a), emergency plans and procedures for a major hazard facility must be established and documented—

- (a) for a facility classified as a major hazard facility within 12 months after the commencement of this section—within 8 months after classification; or

- (b) for a facility classified as a major hazard facility more than 12 months after the commencement of this section—within 3 months after classification.

#### **43 Occupier must consult about emergency plans and procedures**

In establishing, maintaining and documenting emergency plans and procedures the occupier of a major hazard facility must also consult with—

- (a) emergency services; and
- (b) persons and owners who must be consulted under section 46(2)(a).

#### **44 Occupier must provide education and training**

- (1) For section 23(1)(d), for a major hazard facility, education and training must—
  - (a) establish and maintain the standards of competency of persons at the major hazard facility; and
  - (b) be reviewed and updated so that standards of competency are maintained; and
  - (c) be conducted as often as is necessary to maintain the standards of competency; and
  - (d) be conducted before any modification of the major hazard facility that significantly alters the risk associated with the facility is carried out.
- (2) The occupier must keep a written record of the matters mentioned in subsection (1).

#### **45 Safety management system for major hazard facility**

- (1) For section 23(1)(e), the safety management system for a major hazard facility must be a documented, comprehensive integrated system for managing safety at the facility and must contain details of—
  - (a) the system's safety objectives; and

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- (b) the systems and procedures by which the objectives are to be achieved; and
  - (c) the performance criteria that are to be met; and
  - (d) the way in which adherence to the criteria is to be maintained; and
  - (e) other matters prescribed under a regulation.
- (2) The safety management system must be developed and implemented—
- (a) for a facility classified as a major hazard facility within 12 months after the commencement of this section—within 12 months after classification; or
  - (b) for a facility classified as a major hazard facility more than 12 months after the commencement of this section—within 3 months after classification.
- (3) Without limiting subsection (1), but subject to subsection (2), the occupier of a major hazard facility must not operate the facility unless there is a safety management system for the facility.
- (4) The safety management system must be reviewed and updated for the major hazard facility before any modification of the facility that significantly alters the risk associated with the facility is carried out.

**46 Occupier must consult and give information about safety measures**

- (1) The occupier of a major hazard facility must identify areas surrounding the facility in which there may be material harm caused if a major accident happens at the facility.
- (2) The occupier—
- (a) must consult with and inform persons in the areas, and owners of property situated in the areas, about the hazards at the major hazard facility and the safety measures that should be taken if a major accident happens at the facility; and
  - (b) must update the information as often as necessary to keep the persons and owners informed about the hazards

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and the way to respond to a major accident at the facility.

- (3) For subsection (2)(a), the occupier must first consult and inform persons and owners about hazards and safety measures—
  - (a) for a facility classified as a major hazard facility within 12 months after the commencement of this section—within 16 months after classification; or
  - (b) for a facility classified as a major hazard facility more than 12 months after the commencement of this section—within 3 months after classification.
- (4) If a major accident happens at the facility, the occupier must ensure persons and owners who may be affected by the accident are immediately warned of the danger and advised of the safety measures they should take.

#### **47 Occupier must give safety report to chief executive**

- (1) The occupier of a major hazard facility must give a written report (a *safety report*) to the chief executive that includes sufficient detail for the chief executive to decide whether—
  - (a) risk at the major hazard facility is at an acceptable level; and
  - (b) the occupier has satisfied the occupier's obligations under this Act for the following—
    - (i) the induction, information, supervision, education and training under section 23;
    - (ii) the systematic risk assessment under section 41;
    - (iii) the emergency plans and procedures under section 42;
    - (iv) the safety management system under section 45;
    - (v) the consultation and giving of information under section 46;
    - (vi) other obligations prescribed under a regulation.
- (2) The occupier must give the safety report to the chief executive—

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- (a) for a facility classified as a major hazard facility within 12 months after the commencement of this section—within 16 months after classification; or
  - (b) for a facility classified as a major hazard facility more than 12 months after the commencement of this section—within 3 months after classification.
- (3) The occupier must review the safety report and give an update of it to the chief executive before any modification of the major hazard facility that significantly alters the risk associated with the facility is carried out.
  - (4) However, the occupier must review the safety report and give an update of it to the chief executive at least once every 5 years.
  - (5) The occupier must consult with the employees at the facility when preparing or updating the safety report.
  - (6) The occupier must keep a written record of consultation happening under subsection (5).

## **Part 5                      Dangerous goods locations**

### **Division 1                Identification of dangerous goods locations**

#### **48        Meaning of *dangerous goods location* and *large dangerous goods location***

- (1) A place is a *dangerous goods location* if stated dangerous goods or combustible liquids are stored or handled at the place, or are likely to be stored or handled at the place, in quantities that are more than the minimum quantities prescribed under a regulation for this subsection.
- (2) However, a major hazard facility is not a dangerous goods location.
- (3) A dangerous goods location is a *large dangerous goods location* if stated dangerous goods or combustible liquids are

stored or handled at the location, or are likely to be stored or handled at the location, in quantities that are more than the minimum quantities prescribed under a regulation for this subsection.

(4) In this section—

*stated dangerous goods or combustible liquids* means dangerous goods or combustible liquids prescribed under a regulation for this section.

## **Division 2                      Notification to chief executive about possible dangerous goods locations**

### **49                      Obligation to notify chief executive of possible large dangerous goods location**

- (1) This section applies to a place if, having regard to the presence, including the likely presence, of dangerous goods or combustible liquids at the place, the occupier knows, or ought reasonably to know, that the place is a large dangerous goods location.
- (2) The occupier of the place must, as prescribed under a regulation, notify the chief executive, in the approved form, of information about the storage and handling of dangerous goods or combustible liquids at the place, unless the occupier has a reasonable excuse.

Maximum penalty for subsection (2)—50 penalty units.

### **50                      Obligation to comply with chief executive's notice requiring information about possible dangerous goods location**

- (1) This section applies to a place if—
  - (a) the chief executive becomes aware of the presence or the likely presence of dangerous goods or combustible liquids at the place; and
  - (b) the chief executive reasonably considers that the place is or may be a dangerous goods location.

- (2) The chief executive may, by notice given to the occupier of the place, require the occupier to notify the chief executive in the approved form, within the time stated in the notice, of information about the place that will indicate whether the place is a dangerous goods location.
- (3) The time stated in the notice must not be less than 14 days after the notice is given to the occupier.
- (4) The occupier must comply with the requirement, unless the occupier has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

### **Division 3                      Other obligations of occupiers of dangerous goods locations**

#### **51            Other obligations of occupier of dangerous goods locations**

- (1) The occupier of a dangerous goods location has the obligations under this division.
- (2) These obligations are in addition to any other obligation imposed on the occupier of a dangerous goods location under this Act.

#### **52            Emergency plans and procedures for large dangerous goods locations**

For section 23(2)(a), emergency plans and procedures for a large dangerous goods location must be established and documented—

- (a) for a location that is operational at the commencement of this section or starts operations within 12 months after the commencement of this section—within 12 months after the commencement; or
- (b) for a location that starts operations more than 12 months after the commencement of this section—before the location starts operations.

**53 Safety management system for dangerous goods location**

- (1) For section 23(1)(e), the safety management system for a dangerous goods location must be a documented system for managing the safety of dangerous goods and combustible liquids at the location and must contain details of—
  - (a) the system's safety objectives; and
  - (b) the systems and procedures by which the objectives are to be achieved; and
  - (c) the performance criteria that are to be met; and
  - (d) the way in which adherence to the criteria is to be maintained; and
  - (e) other matters prescribed under a regulation.
- (2) The safety management system must be developed and implemented—
  - (a) for a dangerous goods location that is operational at the commencement of this section or starts operations within 12 months after the commencement—within 15 months after the commencement; or
  - (b) for a dangerous goods location that starts operations more than 12 months after the commencement of this section—before the dangerous goods location starts operations.
- (3) Without limiting subsection (1), but subject to subsection (2), the occupier of a dangerous goods location must not operate the location unless there is a safety management system for the location.

## **Part 6**                      **Authorised officers and directives**

### **Division 1**                **Authorised officers**

#### **54**      **Appointment**

- (1) The chief executive may appoint as authorised officers—
  - (a) public service officers or employees; or
  - (b) fire officers; or
  - (c) employees of a local government; or
  - (d) other persons prescribed under a regulation.
- (2) If the administration and enforcement of a regulation is devolved to a local government, the local government's chief executive officer may appoint an employee of the local government to be an authorised officer in relation to the administration and enforcement of the devolved regulation.

#### **55**      **Qualifications for appointment**

The administering executive may appoint a person as an authorised officer only if—

- (a) the administering executive considers the person has the necessary expertise or experience to be an authorised officer; or
- (b) the person has satisfactorily finished training approved by the chief executive.

#### **56**      **Appointment conditions**

- (1) An authorised officer holds office on the conditions stated in the instrument of appointment.
- (2) An authorised officer ceases holding office—
  - (a) if the appointment provides for a term of appointment—at the end of the term; and

- (b) if the conditions of appointment provide—on ceasing to hold another office (the *main office*) stated in the appointment conditions.
- (3) An authorised officer may resign by notice of resignation given to the administering executive.
- (4) However, an authorised officer may not resign from the office of authorised officer (the *secondary office*) if a term of the authorised officer's employment in the main office requires the authorised officer to hold the secondary office.

## **57 Powers**

- (1) An authorised officer has the powers given under this Act.
- (2) An authorised officer appointed under section 54(2) may exercise powers only for the administration and enforcement of the regulation the subject of a devolution to the local government.
- (3) An authorised officer is subject to the directions of the administering executive in exercising the powers.
- (4) An authorised officer's powers may be limited—
  - (a) under a condition of appointment; or
  - (b) by notice given by the administering executive to the authorised officer; or
  - (c) for an authorised officer appointed by the chief executive officer of a local government and without limiting paragraph (a) or (b), by a regulation.

## **58 Functions of authorised officers**

An authorised officer has the following functions relating to major hazard facilities, dangerous goods locations and the storage or handling of dangerous goods or combustible liquids—

- (a) to enforce this Act;
- (b) to monitor safety;
- (c) to inspect and audit places to assess whether risk is at an acceptable level;

- (d) to inspect and audit systems and procedures to assess whether risk is at an acceptable level;
- (e) to help persons to achieve the purposes of this Act by providing advice and information on how the purposes may be achieved;
- (f) to provide the advice and help that may be required from time to time during hazardous materials emergencies;
- (g) to investigate major accidents or near misses;
- (h) to investigate complaints.

## **59 Identity cards**

- (1) The administering executive must give each authorised officer an identity card.
- (2) The identity card must—
  - (a) contain a copy of the signature, and a recent photograph, of the authorised officer; and
  - (b) identify the person as an authorised officer under this Act; and
  - (c) include an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other Acts.

## **60 Failure to return identity card**

A person who ceases to be an authorised officer must return the person's identity card to the administering executive as soon as practicable (but within 21 days) after ceasing to be an authorised officer, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

## **61 Production or display of identity card**

- (1) An authorised officer may exercise a power in relation to another person only if the authorised officer—
  - (a) first produces the authorised officer's identity card for the other person's inspection; or

- (b) has the identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised officer must produce the identity card for the other person's inspection at the first reasonable opportunity.

## **Division 2 Powers of authorised officers**

### **Subdivision 1 Entry of places**

#### **62 Power to enter places**

- (1) An authorised officer may enter a place if—
  - (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the entry is authorised by a warrant; or
  - (d) it is a major hazard facility, a dangerous goods location, or a workplace under the control of a person who has an obligation under this Act and is—
    - (i) open for carrying on business; or
    - (ii) otherwise open for entry; or
  - (e) the authorised officer reasonably believes a dangerous situation exists at the place and it is urgent that the authorised officer enter it to take action to prevent, remove or minimise the danger; or
  - (f) the entry is urgently required to investigate the circumstances of a major accident or near miss at the place.
- (2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or

- (b) enter part of the place the authorised officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) For subsection (1)(d), a workplace does not include a part of the place where a person resides.
- (4) An authorised officer who enters a major hazard facility, dangerous goods location or workplace—
  - (a) must comply with the written safety procedures for the facility, location or workplace; and
  - (b) must not unnecessarily impede business being conducted at the facility, location or workplace.

## **Subdivision 2 Procedure for entry**

### **63 Entry with consent**

- (1) This section applies if an authorised officer intends to ask the occupier of a place to consent to the authorised officer or another authorised officer entering the place.
- (2) Before asking for the consent, the authorised officer must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the authorised officer consent to enter the place and exercise powers under this part; and
  - (d) the time and date the consent was given.

- (5) If the occupier signs an acknowledgment, the authorised officer must immediately give a copy to the occupier.
- (6) A court must find the occupier did not consent to an authorised officer entering the place under this part if—
  - (a) an issue arises in a proceeding before the court whether the occupier of the place consented to the entry; and
  - (b) an acknowledgment is not produced in evidence for the entry; and
  - (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

#### **64 Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

#### **65 Issue of warrant**

- (1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
  - (b) the evidence is at the place, or may be at the place, within the next 7 days.
- (2) The warrant must state—
  - (a) that a stated authorised officer may, with necessary and reasonable help and force—

- (i) enter the place and any other place necessary for entry; and
- (ii) exercise the authorised officer's powers under this part; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant's issue, the warrant ends.

## 66 Special warrants

- (1) An authorised officer may apply for a warrant (a *special warrant*) by phone, fax, radio or another form of communication if the authorised officer considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised officer's remote location.
- (2) Before applying for the warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised officer may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised officer if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy to the authorised officer—
  - (a) the magistrate must tell the authorised officer—
    - (i) what the terms of the warrant are; and
    - (ii) the date and time the warrant was issued; and
  - (b) the authorised officer must complete a form of warrant (a *warrant form*) and write on it—

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- (i) the magistrate's name; and
  - (ii) the date and time the magistrate issued the warrant; and
  - (iii) the terms of the warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the authorised officer, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.
- (7) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the authorised officer completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) A court must find the exercise of the power by an authorised officer was not authorised by a special warrant if—
  - (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant; and
  - (b) the warrant is not produced in evidence; and
  - (c) it is not proved by the person relying on the lawfulness of the entry that the authorised officer obtained the warrant.

**67 Warrants—procedure before entry**

- (1) This section applies if an authorised officer named in a warrant issued under this part for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person present at the place who is the occupier of the place by producing a copy of the authorised officer's identity card or other document evidencing the appointment;

- (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 66(6), a copy of the facsimile warrant or warrant form;
  - (c) tell the person the authorised officer is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.
- (3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

### **Subdivision 3      General powers**

#### **68      General powers after entering places**

- (1) This section applies to an authorised officer who enters a place.
- (2) However, if an authorised officer enters a place to get the occupier's consent to enter a place, this section applies to the authorised officer only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring and enforcing compliance with this Act, the authorised officer may—
  - (a) search any part of the place; or
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
  - (c) take a thing, or a sample of or from a thing, at the place for analysis or testing; or
  - (d) copy a document at the place; or
  - (e) take into or onto the place any persons, equipment and materials the authorised officer reasonably requires for exercising a power under this part; or

- (f) require a person at the place, to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (e); or
  - (g) require a person at the place, to answer questions by the authorised officer to help the authorised officer ascertain whether this Act is being or has been complied with.
- (4) When making a requirement mentioned in subsection (3)(f) or (g), the authorised officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

### **69 Failure to help authorised officer**

- (1) A person required to give reasonable help under section 68(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a requirement under section 68(3)(f) relates to a document, it is a reasonable excuse for the person not to comply with the requirement that complying with the requirement might tend to incriminate the person.

### **70 Failure to answer questions**

- (1) A person of whom a requirement is made under section 68(3)(g) must, unless the person has a reasonable excuse, comply with the requirement.<sup>7</sup>

Maximum penalty—100 penalty units.

- (2) It is a reasonable excuse for the person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person.

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<sup>7</sup> Also, a person must not state anything the person knows to be false or misleading in a material particular—see section 110 (False or misleading statements).

## **Subdivision 4 Power to seize evidence**

### **71 Seizing evidence at major hazard facility, dangerous goods location or other place**

An authorised officer who enters a place under this part without the consent of the occupier and without a warrant, may seize a thing at the place only if the authorised officer reasonably believes the thing is evidence of an offence against this Act.

### **72 Seizing evidence at a place that may only be entered with consent or warrant**

- (1) This section applies if—
  - (a) an authorised officer is authorised to enter a place under this part only with the consent of the occupier or a warrant; and
  - (b) the authorised officer enters the place after obtaining the necessary consent or warrant.
- (2) If the authorised officer enters the place with the occupier's consent, the authorised officer may seize a thing at the place only if—
  - (a) the authorised officer reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the authorised officer enters the place with a warrant, the authorised officer may seize the evidence for which the warrant was issued.
- (4) The authorised officer also may seize anything else at the place if the authorised officer reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) hidden, lost or destroyed; or
    - (ii) used to continue, or repeat, the offence.

- (5) Also, the authorised officer may seize a thing at the place if the authorised officer reasonably believes it has just been used in committing an offence against this Act.

### **73 Securing seized things**

Having seized a thing, an authorised officer may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- 1 sealing a thing and marking it to show access to it is restricted
- 2 sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted

### **74 Tampering with seized things**

- (1) If an authorised officer restricts access to a seized thing, a person must not tamper with the thing, or something restricting access to the thing, without an authorised officer's approval.

Maximum penalty—100 penalty units.

- (2) In this section—  
*tamper* includes attempt to tamper.

### **75 Powers to support seizure**

- (1) To enable a thing to be seized, an authorised officer may require the person in control of it—
- (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (2) The requirement—
- (a) must be made by notice; or

- (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice as soon as practicable.
- (3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.
- (4) A person of whom the requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.
- Maximum penalty—100 penalty units.
- (5) Subject to section 109,<sup>8</sup> the cost of complying with subsection (1) or (3) must be borne by the person.

## **76 Authorised officer may require thing's return**

- (1) If an authorised officer has required a person to take a thing to a stated place by a stated reasonable time under section 75 the authorised officer may require the person to return the thing to the place from which it was taken.
- (2) A person of whom the requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.
- Maximum penalty—100 penalty units.
- (3) Subject to section 109, the cost of complying with subsection (1) must be borne by the person.

## **77 Receipts for seized things**

- (1) As soon as practicable after an authorised officer seizes a thing, the authorised officer must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

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8 Section 109 (Compensation)

- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

## **78 Forfeiture of seized things**

- (1) A seized thing is forfeited to the State if the authorised officer who seized the thing—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the authorised officer to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the authorised officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.

## **79 Return of seized things**

- (1) If a thing has been seized but not forfeited, the authorised officer must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding for an offence involving the thing is started within 6 months, at the end of the proceeding and any appeal from the proceeding.

- (2) However, unless the thing has been forfeited, the authorised officer must immediately return a thing seized as evidence to its owner if the authorised officer stops being satisfied its continued retention as evidence is necessary.

## **80 Access to seized things**

- (1) Until a thing that has been seized is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **Subdivision 5 Power to obtain information**

### **81 Power to require name and address**

- (1) This section applies if—
  - (a) an authorised officer finds a person committing an offence against this Act; or
  - (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the authorised officer reasonably to suspect the person has just committed an offence against this Act.
- (2) The authorised officer may require the person to state the person's name and residential address.
- (3) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.
- (4) The authorised officer may require the person to give the authorised officer evidence of the correctness of the stated name or residential address if the authorised officer reasonably suspects the stated name or address to be false.
- (5) A requirement under subsection (2) or (4) is a *personal details requirement*.

**82 Failure to give name or address**

- (1) A person of whom a personal details requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
- (a) the person was required to state the person's name and residential address by an authorised officer who suspected the person had committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence against this Act.

**83 Power to require production of documents**

- (1) An authorised officer may require a person who has safety obligations under this Act to make available, or produce, for inspection by the authorised officer at a reasonable time and place nominated by the authorised officer, a document to which the person has access that relates or is related to the person's obligations under this Act.
- (2) The authorised officer may keep the document to copy it.
- (3) If the authorised officer copies the document, or an entry in the document, the authorised officer may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (4) The authorised officer must return the document to the person as soon as practicable after copying it.
- (5) However, if a requirement (a *document certification requirement*) is made of a person under subsection (3), the authorised officer may keep the document until the person complies with the requirement.
- (6) Also, an authorised officer may keep the document if the authorised officer reasonably believes it is required for the investigation of a major accident or near miss.

- (7) A requirement under subsection (1) is a *document production requirement*.

#### **84 Failure to produce document**

- (1) A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) It is a reasonable excuse for a person not to comply with a document production requirement if complying with the requirement might tend to incriminate the person.

#### **85 Failure to certify copy of document**

- (1) A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) It is a reasonable excuse for a person not to comply with a document certification requirement if complying with the requirement might tend to incriminate the person.

#### **86 Power to require attendance of persons before an authorised officer to answer questions**

- (1) An authorised officer may require a person to attend before the authorised officer and to answer questions—

- (a) relevant to the discharge of the person's safety obligations under this Act; or
- (b) on safety matters relevant to the operation of a major hazard facility or dangerous goods location; or
- (c) to ascertain whether this Act is being complied with.

- (2) A requirement made of a person under this section to attend before an authorised officer must—

- (a) be made by notice given to the person; and

- (b) state a reasonable time and place for the person's attendance.
- (3) When making a requirement under this section, the authorised officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

### **87 Failure to comply with requirement about attendance**

- (1) A person of whom a requirement is made under section 86 must not, unless the person has a reasonable excuse—
  - (a) fail to attend before the authorised officer at the time and place stated in the notice; or
  - (b) when attending before the authorised officer, fail to comply with a requirement to answer a question.<sup>9</sup>

Maximum penalty—100 penalty units.

- (2) It is a reasonable excuse for a person to fail to comply with a requirement to answer a question if complying with the requirement might tend to incriminate the person.

## **Division 3 Directives by authorised officers**

### **Subdivision 1 Giving directives**

#### **88 Authorised officer may give directive**

A directive may be given by an authorised officer, and for a matter, mentioned in subdivision 2.

#### **89 How directive is given**

- (1) A directive under subdivision 2 must be given in writing to the occupier of the major hazard facility or dangerous goods location to which the directive relates.

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<sup>9</sup> Also a person must not state anything the person knows to be false or misleading in a material particular—see section 110 (False or misleading statements).

- (2) However, for sections 91, 96, 97 and 98, a directive is to be given to the person and in the way stated in the sections.
- (3) A directive, whether given orally or by notice, and any confirmation by notice of an oral directive, must state the following—
  - (a) that the person given the directive may apply under subdivision 4 for the directive to be reviewed;
  - (b) the name and address of the person to whom the application may be made;
  - (c) the time for making the application.
- (4) Failure to comply with subsection (3) does not affect the validity of the directive.

## **Subdivision 2      Matters for which directives may be given**

### **90      Directive to carry out assessment**

- (1) This section applies if an authorised officer reasonably suspects a risk from a major hazard facility or dangerous goods location is not at an acceptable level of risk.
- (2) The authorised officer may give a directive to carry out a stated assessment or to give stated information to enable the authorised officer to decide whether the level of risk is at an acceptable level of risk.

### **91      Directive to reduce risk**

- (1) This section applies if an authorised officer reasonably believes a risk from a major hazard facility or dangerous goods location is not at an acceptable level of risk.
- (2) The authorised officer may give a directive to the occupier of the facility or location to take stated corrective or preventative action to reduce the risk to an acceptable level.
- (3) The directive may be given orally or by notice.

- (4) If the directive is given orally, the authorised officer giving the directive must confirm the directive by notice to the occupier within 2 days.
- (5) Failure to comply with subsection (4) does not affect the validity of the directive.

**92 Directive to review safety management system**

If an authorised officer reasonably believes the safety management system for a major hazard facility or dangerous goods location is inadequate, the authorised officer may give a directive to review the safety management system.

**93 Directive to review systematic risk assessment**

If an authorised officer reasonably believes the systematic risk assessment for a major hazard facility is inadequate, the authorised officer may give a directive to review the systematic risk assessment.

**94 Directive to review emergency plans and procedures**

If an authorised officer reasonably believes the emergency plans and procedures mentioned in section 23(2)(a) for a major hazard facility or large dangerous goods location are inadequate, the authorised officer may give a directive to review the emergency plans and procedures.

**95 Directive to review safety report**

If an authorised officer reasonably believes the safety report for a major hazard facility is inadequate, the authorised officer may give a directive to review the safety report.

**96 Directive to stop and secure storage or handling systems**

- (1) This section applies if an authorised officer reasonably believes a storage or handling system at a major hazard facility, dangerous goods location or other place has caused, or is likely to cause, harm to a person that requires or may require treatment by a doctor.

- (2) The authorised officer may give a directive to the person apparently in charge of the storage or handling system to stop the operation of the system and prevent it from being further operated.
- (3) The directive may be given orally or by notice.
- (4) If the directive is given orally, the authorised officer giving the directive must confirm the directive by notice to the occupier of the facility or location within 2 days.
- (5) Failure to comply with subsection (4) does not affect the validity of the directive.

**97 Directive to suspend operations for unacceptable level of risk**

- (1) This section applies if an authorised officer reasonably believes risk from operations being conducted at a major hazard facility or dangerous goods location is not at an acceptable level.
- (2) The authorised officer may give a directive to the occupier of the facility or location to suspend operations in all or part of the facility or location.
- (3) The directive may be given orally or by notice.
- (4) If the directive is given orally, the authorised officer giving the directive must confirm the directive by notice to the occupier of the facility or location within 2 days.
- (5) Failure to comply with subsection (4) does not affect the validity of the directive.

**98 Directive to isolate site**

- (1) If an authorised officer believes it is necessary to preserve evidence after a major accident, the authorised officer may give a directive to the occupier of a major hazard facility or dangerous goods location to isolate and protect the site of the major accident.
- (2) The directive may be given orally or by notice.

- (3) If the directive is given orally, the authorised officer giving the directive must confirm the directive by notice to the occupier of the facility or location within 2 days.
- (4) Failure to comply with subsection (3) does not affect the validity of the directive.

## **99 Directive to provide independent study or audit**

- (1) An authorised officer may give a directive to provide an independent study or audit about—
  - (a) risks arising out of the operation of a major hazard facility or dangerous goods location; or
  - (b) the safety of part or all of any storage or handling system, building or other structure at a major hazard facility or dangerous goods location; or
  - (c) a major accident or near miss at a major hazard facility or dangerous goods location; or
  - (d) the adequacy of emergency plans, safety management systems and safety reports for a major hazard facility or dangerous goods location.
- (2) The directive must state—
  - (a) the reasons for and objectives of the study or audit; and
  - (b) that the person who undertakes the study or audit must be a person approved by the chief executive.
- (3) For subsection (2)(b), the chief executive may approve a person only if—
  - (a) the person has relevant professional qualifications and experience for the study or audit; and
  - (b) the chief executive is satisfied the person is able to provide an independent study or audit.

### **Subdivision 3      Recording of directives and other matters**

#### **100      Records must be kept**

The occupier of a major hazard facility or dangerous goods location must keep an accurate record of all directives given by an authorised officer under this Act to the occupier.

#### **101      Directives**

- (1) A person to whom a directive is given must comply with the directive within the stated reasonable time in the directive or, if no time is stated, as soon as reasonably practicable.

Maximum penalty—500 penalty units.

- (2) The occupier of a major hazard facility or dangerous goods location to which a directive relates must make a written record of the action taken to comply with the directive as soon as practicable after the action is taken.

Maximum penalty—40 penalty units.

- (3) The occupier of a major hazard facility or dangerous goods location to which a directive relates must make the following available for inspection by employees at the facility or location—

- (a) a copy of each written directive given or, if the directive is given orally, a copy of the notice to the occupier confirming the directive;
- (b) a copy of the written record of the action taken to comply with each directive.

Maximum penalty—40 penalty units.

- (4) A directive remains effective until—
- (a) it is withdrawn in writing by the authorised officer who gave it or another authorised officer; or
- (b) the Industrial Court stays, varies or sets aside the directive.

## **Subdivision 4      Review of directives**

### **102      Application for review**

A person who is given a directive by an authorised officer may apply under this subdivision for the directive to be reviewed.

### **103      Procedure for review**

- (1) The application must—
  - (a) be made in writing to the administering executive; and
  - (b) be supported by enough information to allow the administering executive to decide the application.
- (2) The application must be made to the administering executive within—
  - (a) 14 days after the day on which the person received the directive; or
  - (b) the longer period, within 2 months after the day, the administering executive in special circumstances allows.
- (3) The administering executive must consider the application within 7 days after receiving it and immediately advise the applicant in writing whether the administering executive considers the applicant has complied with subsection (1).
- (4) If the administering executive does not consider the application is supported by enough information to allow the administering executive to decide the application, the administering executive must advise the applicant what further information the administering executive requires.
- (5) When the administering executive is satisfied the applicant has complied with subsection (1), the administering executive must immediately advise the applicant in writing of that fact.

### **104      Review of directive**

- (1) The administering executive must, within 14 days after giving the advice mentioned in section 103(5), review the directive and make a decision (the *review decision*)—

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- (a) to confirm the directive; or
  - (b) to vary or set aside the directive.
- (2) The administering executive's review decision may include giving a directive in substitution for a directive the administering executive decides to set aside.
  - (3) A substituted directive given under subsection (2) is effective as a directive given under this Act.
  - (4) Within 7 days after making the review decision, the administering executive must give notice of the decision to the applicant.
  - (5) The notice must—
    - (a) include the reasons for the review decision; and
    - (b) tell the applicant of the applicant's right of appeal against the decision and how to appeal.
  - (6) Subsection (5)(b) does not apply if the administering executive sets aside the directive without giving a directive in substitution for the directive set aside.
  - (7) Subsection (8) applies if the administering executive does not—
    - (a) review the directive within the time allowed under subsection (1); or
    - (b) having reviewed the directive, advise the applicant of the review decision within the time allowed under subsection (4).
  - (8) The administering executive is taken to have reviewed the directive and made a review decision confirming the directive.

**105 Stay of operation of directive**

- (1) If a person applies under this division for a directive to be reviewed, the person may immediately apply to the Industrial Court for a stay of the directive.
- (2) The court may stay the directive to secure the effectiveness of the review and any later appeal to the court.

- (3) A stay—
  - (a) may be given on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be revoked or amended by the court.
- (4) The period of a stay must not extend past the time when the administering executive reviews the directive and any later period the court allows the person to enable the person to appeal against the review decision.
- (5) An application made for a review of a directive affects the directive, or the carrying out of the directive, only if the directive is stayed.
- (6) However, a directive given under section 97 or 98 must not be stayed.<sup>10</sup>

## **Division 4                    Immediate action to protect people, property or environment**

### **106    Preventing injury and damage—taking direct action**

- (1) This section applies if an authorised officer reasonably believes—
  - (a) a dangerous situation exists at a place; and
  - (b) the dangerous situation poses serious danger; and
  - (c) having regard to the threat of serious danger, it is necessary for the authorised officer to take appropriate action without delay to prevent, remove or minimise the dangerous situation.
- (2) Subsection (1) applies even if the authorised officer has previously given a person a directive under division 3,<sup>11</sup> and the time for complying with the directive has not ended.

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10 Section 97 (Directive to suspend operations for unacceptable level of risk) or 98 (Directive to isolate site)

11 Division 3 (Directives by authorised officers)

- (3) The authorised officer may take, or cause to be taken, the action the authorised officer reasonably believes is necessary to prevent, remove or minimise the dangerous situation.
- (4) In deciding the extent of the action to be taken, the authorised officer must, to the extent that is reasonably practicable, consult with the occupier of the place and the administering executive.
- (5) As soon as practicable after taking the action or causing it to be taken, the authorised officer must immediately—
  - (a) prepare a report that includes a statement of reasons for taking the action, the action taken and any damage to property because of the action; and
  - (b) give the occupier a copy of the report.
- (6) The action an authorised officer may take includes asking someone the authorised officer reasonably believes has appropriate knowledge and experience to help the authorised officer prevent, remove or minimise the dangerous situation.
- (7) A person asked under subsection (6) to help an authorised officer is taken to have the powers of an authorised officer to the extent reasonably necessary for the person to help prevent, remove or minimise the dangerous situation.

## **107 Recovery of costs of government action**

- (1) This section applies if, under section 106, an authorised officer has taken, or caused to be taken, action to prevent, remove or minimise a dangerous situation.
- (2) If the State or a local government incurs costs because of the action taken to prevent, remove or minimise the dangerous situation, the State or local government may recover the costs reasonably incurred in dealing with the situation as a debt owing to the State or local government.
- (3) The costs are recoverable jointly and severally from the following persons—
  - (a) the person who owned the hazardous materials involved in the dangerous situation;

- (b) the occupier of the place where the dangerous situation existed;
  - (c) the person who caused the dangerous situation.
- (4) However, costs are not recoverable from a person who establishes that—
- (a) the dangerous situation was due to the act or default of someone else, other than an employee or agent of the person; or
  - (b) the person could not, exercising reasonable care, have prevented the dangerous situation.
- (5) This section does not limit the powers the State or a local government has apart from this Act.

## **Division 5                    General enforcement matters**

### **108    Notice of damage**

- (1) This section applies if—
- (a) an authorised officer damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction or authority of an authorised officer damages property.
- (2) The authorised officer must immediately give written notice of particulars of the damage to the person who appears to the authorised officer to be the owner of the property.
- (3) If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the authorised officer's or other person's control, the authorised officer may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the authorised officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to—

- (a) damage the authorised officer reasonably believes is trivial; or
  - (b) damage because of action under section 106.
- (6) In this section—  
*owner*, of property, includes the person in possession or control of it.

## 109 Compensation

- (1) If a person incurs loss or expense because of the exercise or purported exercise of a power under division 2 or 4,<sup>12</sup> the person may claim compensation—
  - (a) for the exercise or purported exercise of a power by or for the State—from the State; or
  - (b) for the exercise or purported exercise of a power by or for a local government—from the local government.
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under division 2.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an offence against this Act brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (5) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

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12 Division 2 (Powers of authorised officers) or 4 (Immediate action to protect people, property or environment)

- (6) A person can not claim compensation in relation to an amount recovered from the person by the State or local government under section 107.

### **110 False or misleading statements**

A person must not state anything to an authorised officer the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

### **111 False or misleading documents**

- (1) A person must not give an authorised officer a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the authorised officer, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

### **112 Obstructing authorised officers**

- (1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an authorised officer and the authorised officer decides to proceed with the exercise of the power, the authorised officer must warn the person that—
- (a) it is an offence to obstruct the authorised officer unless the person has a reasonable excuse; and
  - (b) the authorised officer considers the person's conduct an obstruction.

## **Part 7                      Hazardous materials emergencies**

### **Division 1                Purpose**

#### **113    Purpose of pt 7**

The purpose of this part is to allow persons appointed as hazardous materials emergency advisers (*hazmat advisers*) to provide advice and help in relation to hazardous materials emergencies.

### **Division 2                Appointment of persons as hazmat advisers**

#### **114    Appointment**

The chief executive may appoint a person as a hazardous materials emergency adviser.

#### **115    Qualifications for appointment**

The chief executive may appoint a person as a hazmat adviser only if—

- (a) the chief executive considers the person has the necessary expertise or experience to be a hazmat adviser; and
- (b) the person has satisfactorily finished training approved by the chief executive.

#### **116    Appointment conditions**

- (1) A hazmat adviser holds office on the conditions stated in the instrument of appointment.
- (2) A hazmat adviser ceases holding office—
  - (a) if the appointment provides for a term of appointment—at the end of the term; and

- (b) if the conditions of appointment provide—on ceasing to hold another office (the *main office*) stated in the appointment conditions.
- (3) A hazmat adviser may resign by signed notice of resignation given to the chief executive.
- (4) However, a hazmat adviser may not resign from the office of hazmat adviser (the *secondary office*) if a term of the hazmat adviser's employment to the main office requires the hazmat adviser to hold the secondary office.

### **117 Powers**

- (1) A hazmat adviser has the powers given under this Act.
- (2) A hazmat adviser is subject to the directions of the chief executive in exercising the powers.
- (3) A hazmat adviser's powers may be limited—
  - (a) under a condition of appointment; or
  - (b) by notice given by the chief executive to the hazmat adviser.

### **118 Function of hazmat advisers**

The function of hazmat advisers is to give advice and scientific and technical help for the effective management of hazardous materials emergencies.

### **119 Identity cards**

- (1) The chief executive must give each hazmat adviser an identity card.
- (2) The identity card must—
  - (a) contain a copy of the signature, and a recent photograph, of the hazmat adviser; and
  - (b) identify the person as a hazmat adviser under this Act; and
  - (c) include an expiry date for the card.

- (3) This section does not prevent the issue of a single identity card to a person for this Act and other Acts.

### **120 Failure to return identity card**

A person who ceases to be a hazmat adviser must return the person's identity card to the chief executive as soon as practicable, but within 21 days, after ceasing to be a hazmat adviser, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

### **121 Production or display of identity card**

- (1) A hazmat adviser may exercise a power in relation to another person only if the hazmat adviser—
- (a) first produces the hazmat adviser's identity card for the other person's inspection; or
  - (b) has the identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the hazmat adviser must produce the identity card for the other person's inspection at the first reasonable opportunity.

## **Division 3 Powers of hazmat advisers**

### **Subdivision 1 Entry of places**

#### **122 Power to enter places**

- (1) A hazmat adviser may enter a place at which a hazardous materials emergency is happening if asked to do so by a prescribed officer at the place.

- (2) In this section—

*prescribed officer* means—

- (a) a fire officer; or

- (b) a police officer; or
- (c) if the place is a coal mine to which the Coal Act applies—an inspector under that Act; or
- (d) if the place is a mine or quarry to which the Mines Act applies—an inspector under that Act; or
- (e) another person, appointed under an Act, prescribed under a regulation.

## **Subdivision 2      General powers**

### **123      General powers after entering a place for a hazardous materials emergency**

- (1) This section applies to a hazmat adviser who enters a place at the request of a prescribed officer under section 122.
- (2) The hazmat adviser may, if asked to do so by the prescribed officer—
  - (a) search any part of the place; or
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
  - (c) take a thing, or a sample of or from a thing, at the place for analysis or testing; or
  - (d) copy a document at the place.
- (3) For exercising a power under subsection (2), the hazmat adviser may—
  - (a) take into or onto the place any persons, equipment and materials the hazmat adviser reasonably requires for exercising the power; or
  - (b) require a person at the place, to give the hazmat adviser reasonable help.
- (4) When making a requirement mentioned in subsection (3)(b), the hazmat adviser must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

**124 Failure to help a hazmat adviser**

- (1) A person required to give reasonable help under section 123(3)(b) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a requirement under section 123(3)(b) relates to a document or answering a question, it is a reasonable excuse for the person not to comply with the requirement that complying with the requirement might tend to incriminate the person.

**125 Obstructing hazmat advisers**

- (1) A person must not obstruct a hazmat adviser in the performance of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed a hazmat adviser and the hazmat adviser decides to proceed with the exercise of the power, the hazmat adviser must warn the person that—
  - (a) it is an offence to obstruct the hazmat adviser unless the person has a reasonable excuse; and
  - (b) the hazmat adviser considers the person's conduct an obstruction.

**Part 8 Investigations and inquiries into major accidents****Division 1 Requirement about major accidents and near misses****126 Notice of major accident**

- (1) If a major accident happens at a major hazard facility, the occupier of the facility must—

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- (a) as soon as practicable, notify the chief executive about the major accident and of any serious harm or material harm caused in the accident to a person, property or the environment; and
- (b) if notification to the chief executive is given orally, confirm the oral notification by notice within 7 days; and
- (c) investigate the major accident; and
- (d) give a written report on the investigation to the chief executive within 1 month of the accident or, if the chief executive considers this is not practicable, the longer time allowed by the chief executive; and
- (e) consult with the employees at the facility about avoiding major accidents in the future.

Maximum penalty—200 penalty units.

- (2) However, the occupier does not have to comply with subsection (1) if the major accident is notified under any of the following Acts—
  - (a) *Explosives Act 1999*;
  - (b) *Petroleum and Gas (Production and Safety) Act 2004*;
  - (c) *Radiation Safety Act 1999*.

**127 Recording of near misses**

- (1) If a near miss happens at a major hazard facility, the occupier of the facility must as soon as practicable—
  - (a) record the near miss; and
  - (b) investigate the near miss and record the results of the investigation; and
  - (c) consult with the employees at the facility on ways of avoiding near misses in the future.

Maximum penalty—80 penalty units.

- (2) The occupier must keep a record created under subsection (1) while the major hazard facility continues to operate.

Maximum penalty—80 penalty units.

## **Division 2                    Inquiries by board of inquiry**

### **128    Minister may establish or re-establish boards of inquiry**

- (1) The Minister may, by gazette notice, establish a board of inquiry to inquire into a major accident at any place.
- (2) The notice, or a later gazette notice, may state matters relevant to the inquiry including, for example, the membership of the board, who is the chairperson of the board, and its terms of reference.
- (3) The Minister may exercise powers under this section for a major accident whether or not a board of inquiry had previously inquired into the accident.

### **129    Role of board of inquiry**

- (1) The board of inquiry must—
  - (a) inquire into the circumstances and probable causes of the major accident; and
  - (b) give the Minister a written report of the board's findings.
- (2) The report may contain the recommendations the board considers appropriate and other relevant matters.
- (3) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.
- (4) However, if the board gives the Minister a separate report of issues the board considers should not be made public, the Minister need not table the separate report in the Legislative Assembly.

### **130    Conditions of appointment**

- (1) A member of the board of inquiry is entitled to be paid the remuneration and allowances decided by the Governor in Council.
- (2) A member holds office on conditions not provided by this Act that are decided by the Minister.

**131 Chief executive to arrange for services of staff and financial matters for board of inquiry**

As soon as practicable after the board of inquiry is established, the chief executive must consult with the chairperson of the board and arrange—

- (a) for the services of officers and employees of the department and other persons to be made available to the board for the conduct of the inquiry; and
- (b) for financial matters relevant to the board.

**132 Procedure**

- (1) When conducting its inquiry, the board of inquiry must—
  - (a) observe natural justice; and
  - (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.
- (2) In conducting the inquiry, the board—
  - (a) is not bound by the rules of evidence; and
  - (b) may inform itself in any way it considers appropriate, including by holding hearings; and
  - (c) may decide the procedures to be followed for the inquiry.
- (3) However, the board must comply with this division and any procedural rules prescribed under a regulation.

**133 Notice of inquiry**

The chairperson of the board of inquiry must give at least 14 days notice of the time and place of the inquiry to—

- (a) any person the chairperson considers may be concerned in the major accident the subject of the inquiry; and
- (b) any other person the chairperson reasonably believes should be given the opportunity to appear at the inquiry.

**134 Inquiry to be held in public other than in special circumstances**

- (1) An inquiry must be held in public.
- (2) However, the board of inquiry may, of its own initiative or on the application of a person represented at the inquiry, direct that the inquiry, or a part of the inquiry, be held in private, and give directions about the persons who may be present.
- (3) The board may give a direction under subsection (2) only if it is satisfied that it is proper to do so in the special circumstances of the case.

**135 Protection of members, legal representatives and witnesses**

- (1) A member of the board of inquiry has, in the performance of the member's duties, the same protection and immunity as a Supreme Court judge performing the functions of a judge.
- (2) A lawyer or other person appearing before the board for someone else has the same protection and immunity as a barrister appearing for a party in a proceeding in the Supreme Court.
- (3) A person given a witness requirement notice to attend or appearing before the board as a witness has the same protection as a witness in a proceeding in the Supreme Court.

**136 Record of proceedings to be kept**

The board of inquiry must keep a record of its proceedings.

**137 Procedural fairness and representation**

In the conduct of the inquiry, the board of inquiry must give the occupier of the place where the major accident happened the opportunity of making a defence to all claims made against the occupier, either in person or by the occupier's lawyer or agent.

**138 Board's powers on inquiry**

- (1) In conducting the inquiry, the board of inquiry may—
  - (a) act in the absence of any person who has been given reasonable notice of the inquiry; and
  - (b) receive evidence on oath or by statutory declaration; and
  - (c) adjourn the inquiry; and
  - (d) disregard any defect, error, omission or insufficiency in a document.
- (2) A member of the board may administer an oath to a person appearing as a witness before the inquiry.

**139 Notice to witness**

- (1) The chairperson of the board of inquiry may, by notice given to a person (a *witness requirement notice*), require the person to attend the inquiry at a stated time and place to give evidence or produce stated documents or things.
- (2) A person required to appear as a witness before the board is entitled to the witness fees prescribed under a regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the chairperson.

**140 Inspection of documents or other things**

- (1) If a document or other thing is produced to the board of inquiry at the inquiry, the board may—
  - (a) inspect the document or other thing; and
  - (b) make copies of, photograph, or take extracts from, the document or other thing if it is relevant to the inquiry.
- (2) The board may also take possession of the document or other thing, and keep it while it is necessary for the inquiry.
- (3) While it keeps a document or other thing, the board must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at a reasonable place and time the board decides.

**141 Inquiry may continue despite court proceeding unless otherwise ordered**

The inquiry of the board of inquiry may start or continue, and a report may be prepared or given, despite a proceeding before any court or tribunal, unless a court or tribunal with the necessary jurisdiction orders otherwise.

**142 Offences by witnesses**

- (1) A person given a witness requirement notice—
- (a) must not fail, without reasonable excuse, to attend as required by the notice; and
  - (b) must not fail, without reasonable excuse, to continue to attend as required by the chairperson of the board of inquiry until excused from further attendance.

Maximum penalty—40 penalty units.

- (2) A person appearing as a witness at the inquiry must not fail—
- (a) to take an oath when required by the chairperson of the board; or
  - (b) without reasonable excuse, to answer a question the person is required to answer by a member of the board; or
  - (c) without reasonable excuse, to produce a document or other thing the person is required to produce under a witness requirement notice.

Maximum penalty—40 penalty units.

- (3) It is a reasonable excuse for subsection (2)(b) or (c) that answering the question or producing the document or other thing might tend to incriminate the person.

**143 False or misleading statements**

A person must not state anything to the board of inquiry that the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

**144 False or misleading documents**

- (1) A person must not give to the board of inquiry a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—200 penalty units.

- (2) Subsection (1) does not apply to a person who, when giving the document—
- (a) informs the board, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably get, the correct information—gives the correct information to the board.

**145 Contempt of board**

A person must not—

- (a) insult the board of inquiry; or
- (b) deliberately interrupt the inquiry; or
- (c) create or continue, or join in creating or continuing, a disturbance in or near a place where the board is conducting its inquiry; or
- (d) do anything that would be contempt of court if the board were a judge acting judicially.

Maximum penalty—40 penalty units.

**146 Report of offences**

If the board of inquiry considers material before it discloses an offence, it may report the offence to 1 or more of the following and may make available to them all relevant material in the board's possession—

- (a) the commissioner of the police service;
- (b) the Criminal Justice Commission;
- (c) the director of public prosecutions;
- (d) the chief executive.

**147 Change of membership of board**

The inquiry of the board of inquiry is not affected by a change in its membership.

**Part 9 Appeals****Division 1 Appeals against classification as a major hazard facility****148 Appeals against chief executive decisions**

The occupier of a facility who is aggrieved by a decision of the chief executive to classify the facility as a major hazard facility may appeal against the decision.

**149 Court to which appeal may be made**

An appeal under this division may be made to the Magistrates Court nearest the place where the facility is situated.

**150 Starting appeal**

- (1) An appeal is started by—
  - (a) filing a notice of appeal with the clerk of the court of the Magistrates Court; and
  - (b) serving a copy of the notice on the chief executive.
- (2) The notice of appeal must be filed within 28 days after the appellant is given notice of the decision.
- (3) The court may at any time extend the period for filing the notice of appeal.
- (4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

**151 Stay of operation of decisions**

- (1) The Magistrates Court may grant a stay of the operation of the decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
  - (a) may be given on conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be revoked or amended by the court.
- (3) The period of a stay under this section must not extend past the time when the court decides the appeal.
- (4) An appeal against the decision affects the decision only if the decision is stayed.

**152 Hearing procedures**

- (1) In deciding an appeal, the Magistrates Court—
  - (a) is not bound by the rules of evidence; and
  - (b) must comply with natural justice.
- (2) An appeal is by way of rehearing unaffected by the chief executive's decision, on the material before the chief executive and any further evidence allowed by the Magistrates Court.

**153 Powers of court on appeal**

- (1) In deciding an appeal, the Magistrates Court may—
  - (a) confirm the decision appealed against; or
  - (b) vary the decision; or
  - (c) set aside the decision and substitute another decision; or
  - (d) set aside the decision and return the issue to the chief executive with the directions the court considers appropriate.
- (2) The decision as varied or substituted may be any decision that the chief executive may make.

- (3) If the court varies a decision or substitutes another decision, the varied or substituted decision is, for this Act other than this part, taken to be the decision of the chief executive.

## **154 Appeals to District Court**

An appeal to the District Court from a decision of the Magistrates Court may be made only on a question of law.

## **Division 2 Appeals against review decisions**

### **155 Who may appeal**

A person whose interests are affected by a review decision of an administering executive under part 6, division 3, subdivision 4<sup>13</sup> may appeal to the Industrial Court.

### **156 Starting appeal**

- (1) An appeal is started by—
- (a) filing notice of appeal with the registrar of the Industrial Court; and
  - (b) complying with any rules of court applying to the appeal.
- (2) The notice of appeal must be filed within 28 days after—
- (a) the day the appellant receives notice of the review decision under section 104;<sup>14</sup> or
  - (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the review decision.
- (3) The court may at any time extend the period for filing the notice of appeal.
- (4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

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13 Part 6 (Authorised officers and directives), division 3 (Directives by authorised officers), subdivision 4 (Review of directives)

14 Section 104 (Review of directive)

**157 Stay of operation of review decision**

- (1) The Industrial Court may grant a stay of a review decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
  - (a) may be given on the conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be revoked or amended by the court.
- (3) The period of a stay must not extend past the time when the court decides the appeal.
- (4) An appeal against a review decision affects the decision, or the carrying out of the decision, only if the decision is stayed.
- (5) However, a review decision about a directive given under section 97 or 98<sup>15</sup> must not be stayed.

**158 Hearing procedures**

- (1) The procedure for an appeal is to be in accordance with the Industrial Court's rules or, if the rules make no provision or insufficient provision, in accordance with directions of the Industrial Court.
- (2) An appeal is by way of rehearing, unaffected by the administering executive's review decision, on the material before the administering executive and any further evidence allowed by the Industrial Court.

**159 Assessors**

If the Industrial Court is satisfied the appeal involves an issue of special knowledge and skill, the court may appoint 1 or more assessors to help in deciding the appeal.

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15 Section 97 (Directive to suspend operations for unacceptable level of risk) or 98 (Directive to isolate site)

**160 Powers of court on appeal**

- (1) In deciding an appeal, the Industrial Court may—
  - (a) confirm the review decision appealed against; or
  - (b) vary the review decision; or
  - (c) set aside the review decision and make a decision in substitution for the review decision; or
  - (d) set aside the review decision and return the issue to the authorised officer who gave the directive or to the administering executive with directions the court considers appropriate.
- (2) The decision as varied or substituted may be any decision that the administering executive may make.
- (3) If the court varies the decision or substitutes another decision, the varied or substituted decision is, for this Act other than this part, taken to be the decision of the administering executive.

**Part 10 Legal proceedings****Division 1 Evidence****161 Proof of appointments and authority unnecessary**

In a proceeding it is not necessary to prove—

- (a) the appointment of the administering executive, an authorised officer or a hazmat adviser; or
- (b) the authority of the administering executive, an authorised officer or a hazmat adviser to do anything under this Act.

**162 Proof of signatures unnecessary**

A signature purporting to be the signature of the administering executive, an authorised officer or a hazmat adviser is evidence of the signature it purports to be.

**163 Evidentiary aids**

- (1) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—
  - (a) a stated document is—
    - (i) an appointment or a copy of an appointment; or
    - (ii) a directive or a copy of a directive given under this Act; or
    - (iii) a decision, or a copy of a decision, given or made under this Act; or
    - (iv) a record or document, a copy of a record or document, or an extract from a record or document, kept under this Act;
  - (b) on a stated day, or during a stated period, a stated certificate, approval or appointment was, or was not, in force for a stated person or thing;
  - (c) on a stated day, or during a stated period, a standard issued or published by the National Occupational Health and Safety Commission or Standards Australia or something in the standard was, or was not, in force;
  - (d) on a stated day a stated person was given a stated directive, direction, requirement or notice under this Act;
  - (e) a stated amount is payable under this Act by a stated person and has not been paid.
- (2) A document purporting to be published by or under the authority of the National Occupational Health and Safety Commission or Standards Australia is, on its production in a proceeding, evidence of the matters appearing on and in the document.

- (3) Any instrument, equipment or installation used by an authorised officer, a hazmat adviser or analyst in accordance with any conditions prescribed under a relevant document for its use is taken to be accurate and precise in the absence of evidence to the contrary.
- (4) In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.
- (5) In any proceeding for an offence against this Act defined as involving false or misleading information, a false or misleading statement, or a false or misleading entry, it is enough for a charge to state that the information, statement or entry was, without specifying which, 'false or misleading'.

## 164 Expert reports

- (1) This section applies if—
  - (a) a party (the *applicant party*) to a proceeding under this Act has a report (an *expert report*) made by a person, other than an analyst's report, that—
    - (i) states the person is an expert and the basis for that statement, including, for example, the person's qualifications and experience; and
    - (ii) deals entirely or mainly with issues on which the person states the person is qualified to give expert evidence; and
  - (b) the applicant party intends to apply to a court before which the proceeding is taken for the court to admit the report as evidence under this section in the proceedings of the matters stated in the report, whether or not the expert is to attend to give evidence.
- (2) At least 28 working days before the proposed date of the proceedings, the applicant party must give notice to the other parties to the proceedings that the applicant party intends to seek the leave of the court to admit the expert report as evidence.
- (3) The notice must include a copy of the report.

- (4) At least 14 days before the proposed date of the proceedings, another party may object to the applicant party's application for the court to admit the expert report as evidence, by giving the applicant party notice of the objection in the approved form.
- (5) If an objection is made under subsection (4), the expert report is not admissible under this section.
- (6) If the court is satisfied the applicant party complied with subsection (2) and no objection is made under subsection (4), the court may admit the expert report as evidence.
- (7) The court must consider the following as part of its decision as to whether the court should admit the expert report as evidence—
  - (a) the contents of the report;
  - (b) if relevant, why the expert does not intend to give oral evidence;
  - (c) the risk that its admission or exclusion from evidence will result in unfairness to a party, in particular having regard to a party's ability to dispute the contents of the report if the expert does not give oral evidence;
  - (c) submissions by the applicant party and other parties;
  - (d) any other relevant circumstance.
- (8) A report admitted under subsection (6) is evidence of any fact or opinion of which the expert could have given oral evidence.

## **165 Analyst's report**

The production by the prosecutor or the defendant in a prosecution of a signed analyst's report stating any of the following is evidence of them—

- (a) the analyst's qualifications;
- (b) the analyst took, or received from a stated person, the sample mentioned in the report;

- (c) the analyst analysed the sample on a stated day, or during a stated period, and at a stated place;
- (d) the results of the analysis.

## **Division 2                      Proceedings**

### **166      Indictable and summary offences**

- (1) An offence against this Act for which the maximum penalty of imprisonment is 2 years or more is an indictable offence.
- (2) Any other offence against this Act is a summary offence.

### **167      Proceedings for indictable offences**

- (1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
  - (a) by way of summary proceedings under the *Justices Act 1886*; or
  - (b) on indictment.
- (2) A magistrate must not hear an indictable offence summarily if—
  - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
  - (b) the magistrate considers that the charge should be prosecuted on indictment.
- (3) If subsection (2) applies—
  - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
  - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
  - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and

- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).<sup>16</sup>
- (4) The maximum penalty that may be summarily imposed for an indictable offence is 165 penalty units or 1 year's imprisonment.
- (5) More than 1 contravention of a safety obligation under section 18<sup>17</sup> may be charged as a single charge if the acts or omissions giving rise to the claimed contravention happened within the same period and in relation to the same place.

### **168 Limitation on who may summarily hear indictable offence proceedings**

- (1) A proceeding must be before a magistrate if it is a proceeding—
  - (a) for the summary conviction of a person on a charge for an indictable offence; or
  - (b) for an examination of witnesses for a charge for an indictable offence.
- (2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

### **169 Limitation on time for starting summary proceedings**

A proceeding for an offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 3 years after the commission of the offence.

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16 *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

17 Section 18 (Discharge of obligations)

**170 Forfeiture on conviction**

- (1) On conviction of a person for an offence against this Act, a court may order the forfeiture to the State of—
  - (a) anything used to commit the offence; or
  - (b) anything else the subject of the offence.
- (2) The court may make the order—
  - (a) whether or not the thing has been seized; and
  - (b) if the thing has been seized, whether or not the thing has been returned to its owner.
- (3) The court may make any order to enforce the forfeiture it considers appropriate.
- (4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

**171 Dealing with forfeited things**

- (1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.
- (2) Without limiting subsection (1), the chief executive may destroy the thing.

**172 Responsibility for acts or omissions of representatives**

- (1) Subsections (2) and (3) apply in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the

person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

*representative* means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

*state of mind* of a person includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

### **173 Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure that the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

**174 Costs of investigation**

- (1) If a court convicts a person of an offence against this Act, the court may order the person to pay the department's, another department's or a local government's reasonable costs of investigating the offence, including reasonable costs of preparing for the prosecution of the offence.
- (2) An order under subsection (1) is taken to be a judgment in the court's civil jurisdiction, irrespective of the amount.
- (3) An issue arising about whether the costs have been incurred and their amount is to be decided on the balance of probabilities.
- (4) This section does not limit the orders for costs the court may make.

**175 Fines payable to local government**

- (1) This section applies if—
  - (a) the administration and enforcement of a matter has been devolved to a local government; and
  - (b) a proceeding for an offence about the matter is taken; and
  - (c) a court imposes a fine for the offence.
- (2) The fine must be paid to the local government.
- (3) If a person other than the local government prosecutes the offence, subsection (2) does not apply to any part of the fine the court orders be paid to the person.

**Part 11 Miscellaneous****176 Service of documents**

- (1) If a document is required or permitted under this Act to be given to a person, the document may be given to the person by facsimile transmission directed and sent to—

- (a) the last transmission number given to the giver of the document by the person as the facsimile transmission number for service of documents on the person; or
  - (b) the facsimile transmission number operated—
    - (i) at the address of the person last known to the giver of the document; or
    - (ii) if the person is a corporation, at the corporation's registered office under the Corporations Act.
- (2) A document given under subsection (1) is taken to have been given on the day the copy is transmitted.
- (3) This section does not limit any other means of giving documents authorised or permitted by law including, for example, under the *Acts Interpretation Act 1954*, part 10.<sup>18</sup>

### **177 Person not to encourage refusal to answer questions**

- (1) A person must not encourage or influence, by general direction, promise of advantage, threat of dismissal or otherwise, another person to refuse to answer questions put to the other person by an authorised officer or a hazmat adviser.

Maximum penalty—100 penalty units.

- (2) To remove doubt, it is declared that subsection (1) does not apply to the provision of legal advice to an employee by a lawyer.

- (3) In this section—

*encourage* includes attempt to encourage.

*influence* includes attempt to influence.

### **178 Person not to knowingly make false or misleading entry**

A person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—100 penalty units.

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<sup>18</sup> *Acts Interpretation Act 1954*, part 10 (Service of documents)

**179 Impersonating authorised officer or hazmat adviser**

A person must not pretend to be an authorised officer or a hazmat adviser.

Maximum penalty—40 penalty units.

**180 Relationship with Integrated Planning Act 1997**

- (1) The chief executive may designate an area surrounding a major hazard facility as a MHF consultation zone if the chief executive believes the level of risk to persons, property or the environment should be a significant factor in assessing development applications for material changes of use under the *Integrated Planning Act 1997*.
- (2) The chief executive must give a notice of each MHF consultation zone to the local government in whose area the zone is, whether wholly or in part.
- (3) The notice must include a map of the MHF consultation zone.
- (4) If the chief executive decides the reasons for designating an area as an MHF consultation zone no longer apply to the MHF consultation zone, the chief executive may give the local government a notice stating the area is no longer an MHF consultation zone.
- (5) If a local government receives a notice mentioned in subsection (2), it must note the MHF consultation zone on—
  - (a) its planning scheme; and
  - (b) any new planning scheme it makes before any notice mentioned in subsection (4) is given.
- (6) If a local government receives a notice mentioned in subsection (4), it must remove the note about the MHF consultation zone from the planning scheme.
- (7) The chief executive must publish copies of each notice under subsections (2) and (4) in the gazette.
- (8) If a word used in this section is defined in the *Integrated Planning Act 1997*, the word used has the same meaning as in that Act.

**181 Delegations by chief executive**

- (1) The chief executive may delegate the chief executive's powers under this Act to—
  - (a) an appropriately qualified officer of the department; or
  - (b) the chief executive of another department; or
  - (c) the chief commissioner of the Queensland Fire and Rescue Authority; or
  - (d) a local government.
- (2) A delegation of a power by the chief executive to a person mentioned in subsection (1)(b), (c) or (d) may permit the subdelegation of the power to an appropriately qualified officer of the other department, fire officer or officer of a local government.
- (3) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example of standing—*

a person's classification level in the public service

**182 Devolution of powers**

- (1) The Governor in Council may, by regulation (the *devolving regulation*), devolve to a local government the administration and enforcement of a regulation (a *stated matter*) about flammable and combustible liquids.
- (2) On the commencement of the devolving regulation, the administration and enforcement of the stated matter is a function of local government to be performed by the local government for its area.
- (3) To remove doubt, it is declared that the local government may—
  - (a) make a resolution or local law that is not inconsistent with this Act about the fees payable to it for the stated matter; and

- (b) make a local law that is not inconsistent with this Act about any matter for which it is necessary or convenient to make provision for carrying out or giving effect to the stated matter.
- (4) Despite subsection (3)(a), a local government may make a resolution or local law prescribing a lower, but not a higher, fee for something for which a fee is prescribed under a regulation.
- (5) If the chief executive is satisfied the local government has failed to do anything in the administration or enforcement of the stated matter—
  - (a) the chief executive may do the thing; and
  - (b) the reasonable costs and expenses incurred by the chief executive are a debt payable by the local government to the State.
- (6) If a regulation is devolved to a local government the regulation may refer to the local government and officers of the local government.

### **183 Delegations relating to devolved matters**

- (1) For a regulation devolved to a local government under section 182, the local government's chief executive officer may delegate that officer's or the chief executive officer's powers under the regulation to—
  - (a) an appropriately qualified officer of the local government; or
  - (b) an appropriately qualified public service officer.
- (2) A delegation of a power by the chief executive officer of a local government to a person may permit the subdelegation of the power to an appropriately qualified officer of the local government.
- (3) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example of standing—*

a person's classification level in a local government or the public service

#### **184 Representation by employee or contractor**

- (1) An employee or other person at a major hazard facility or dangerous goods location may make, either personally or by a representative, a representation to an authorised officer about an alleged contravention of this Act at the facility or location.
- (2) The authorised officer must investigate the matter.
- (3) The name of the person making a representation must not be disclosed except for a prosecution under subsection (4).
- (4) A person must not make a false or frivolous representation under subsection (1).

Maximum penalty for subsection (4)—40 penalty units.

#### **185 Protecting officials from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to—
  - (a) if the official is the chief executive officer of a local government, an authorised officer appointed by the chief executive officer of a local government or acting under the direction of an authorised officer appointed by the chief executive officer of a local government—the local government; or
  - (b) if paragraph (a) does not apply—the State.
- (3) In this section—
 

*official* means—

  - (a) the Minister; or
  - (b) the administering executive; or
  - (c) an authorised officer; or
  - (d) a hazmat adviser; or

- (e) a person acting under the direction of an authorised officer.

## **186 Forms**

- (1) The chief executive may approve forms for use under this Act.
- (2) The chief executive officer of a local government to which the administration and enforcement of a regulation is devolved under section 182 may approve forms for use under the regulation.

## **187 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may—
  - (a) prescribe ways to prevent or minimise exposure to risk relating to the storage or handling of dangerous goods or combustible liquids at any place; and
  - (b) prescribe additional requirements to prevent or minimise exposure to risk relating to the operation of major hazard facilities; and
  - (c) provide for the giving of advice about hazardous materials emergencies; and
  - (d) provide for the imposition and operation of a licensing system for places where flammable or combustible liquids are stored or handled; and
  - (e) provide for a code for IDAS, within the meaning of the *Integrated Planning Act 1997*, for matters under this Act relating to major hazard facilities, possible major hazard facilities, dangerous goods locations or MHF consultation zones; and
  - (f) set fees payable under this Act; and
  - (g) deal with matters of an administrative nature.
- (3) A regulation may impose a penalty of—

- (a) not more than 200 penalty units for a contravention of a provision of a regulation imposing a requirement for the operation of major hazard facilities; and
- (b) not more than 100 penalty units for a contravention of a provision of a regulation imposing a requirement for the storage or handling of dangerous goods or combustible liquids at dangerous goods locations; and
- (c) not more than 20 penalty units for a contravention of another provision of a regulation.

## **Part 12                      Repeal**

### **188      Repeal**

The Building (Flammable and Combustible Liquids) Regulation 1994 (1994 SL No. 103) is repealed.

## Schedule 2 Dictionary

### section 8

***acceptable level of risk*** see section 17.

***ADG Code*** means the Australian Code for the Transport of Dangerous Goods by Road and Rail approved by the Ministerial Council for Road Transport, as in force from time to time.

***administering executive*** means—

- (a) for a matter, the administration and enforcement of which has been devolved to a local government under section 182—the local government’s chief executive officer; or
- (b) otherwise—the chief executive.

***approved form*** means a form approved by the administering executive under section 186.

***AS 1940*** means Australian Standard AS 1940 The Storage and Handling of Flammable and Combustible Liquids made by Standards Australia, as in force from time to time.

***authorised officer*** means a person appointed as an authorised officer under this Act.

***bodily harm*** see Criminal Code, section 1.<sup>19</sup>

***chemical*** has the meaning given in the *Environmental Protection Regulation 1998*, schedule 9.

***Coal Act*** means—

- (a) until the *Coal Mining Safety and Health Act 1999*, section 9 commences—the *Coal Mining Act 1925*; or
- (b) after the *Coal Mining Safety and Health Act 1999*, section 9 commences—the *Coal Mining Safety and Health Act 1999*.

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19 Criminal Code, section 1—

***bodily harm*** means any bodily injury which interferes with health or comfort.

## Schedule 2 (continued)

***combustible liquid*** means a combustible liquid under the flammable and combustible liquids standard.

***conviction*** includes a plea of guilty, or a finding of guilt by a court, even though a conviction is not recorded.

***dangerous goods*** see section 9.

***dangerous goods location*** see section 48.

***dangerous situation***, at a place, means, although there is not a hazardous materials emergency at the place—

- (a) it is likely that there will be a hazardous materials emergency at the place if appropriate action is not taken; and
- (b) it is reasonable to conclude, at the least, that taking the action should not be indefinitely delayed.

***document certification requirement*** see section 83(5).

***document production requirement*** see section 83(7).

***emergency services*** means the Queensland Ambulance Service under the *Ambulance Service Act 1991*, the Queensland Fire and Rescue Service under the *Fire and Rescue Service Act 1990* and the department.

***environment*** see section 10.

***executive officer***, of a corporation, means a person who—

- (a) is a member of the governing body of the corporation; or
- (b) is concerned with, or takes part in, the corporations management, whatever the person's position is called and whether or not the person is a director of the corporation.

***facility*** means a place where hazardous materials are, or are to be, stored or handled.

***fire officer*** means a fire officer under the *Fire and Rescue Authority Act 1990*.

## Schedule 2 (continued)

***flammable and combustible liquids standard*** means—

- (a) if a standard is prescribed under a regulation as a flammable and combustible liquids standard—that standard; or
- (b) otherwise—AS 1940.

***flammable liquid*** means a flammable liquid under the flammable and combustible liquids standard.

***grievous bodily harm*** see Criminal Code, section 1.<sup>20</sup>

***handling*** includes—

- (a) conveying, manufacturing, processing, using, treating, dispensing, packing, selling, transferring, rendering harmless, destroying and disposing; and
- (b) for a pipeline, conveying within the pipeline.

***hazard*** see section 11.

***hazardous material*** see section 12.

***hazardous materials emergency***, at a place, means a situation involving hazardous materials or suspected hazardous materials at the place that includes a loss of control, or an imminent risk of loss of control, of the materials or a loss of control of anything that may impact on the materials if the loss of control causes, or the loss of control or imminent risk of loss of control has the potential to cause, material harm to persons, property or the environment.

***hazmat adviser*** means a person appointed as a hazardous materials emergency adviser under this Act.

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20 Criminal Code, section 1—

***grievous bodily harm*** means—

- (a) the loss of a distinct part or an organ of the body; or
- (b) serious disfigurement; or
- (c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health;

whether or not treatment is or could have been available.

## Schedule 2 (continued)

**large dangerous goods location** see section 48.

**major accident** see section 13.

**major hazard facility** see section 31(1).

**material harm** is harm that—

- (a) causes or has the potential to cause harm to a person that requires or may require treatment by a doctor; or
- (b) results in costs of more than \$1000 being incurred to prevent, minimise or repair harm to property or the environment.

**Mines Act** means—

- (a) until the *Mining and Quarrying Safety and Health Act 1999*, section 9 commences—the *Mines Regulation Act 1964*; or
- (b) after the *Mining and Quarrying Safety and Health Act 1999*, section 9 commences—the *Mining and Quarrying Safety and Health Act 1999*.

**modification**, of a major hazard facility or dangerous goods location, includes—

- (a) a change to plant, processes or quantities of hazardous materials at the facility or location; or
- (b) the introduction of different hazardous materials or new plant, processes, or operating procedures at the facility or location; or
- (c) organisational change at the facility or location; or
- (d) a change to the safety management system at the facility or location.

**multiple deaths** means the deaths of 2 or more persons.

**near miss** means any sudden event that, apart from mitigating effects, actions or systems, could have escalated to a major accident.

**notice** means signed written notice.

**notify** means give a notice.

## Schedule 2 (continued)

**obstruct** includes hinder and attempt to obstruct or hinder.

**occupier** see section 14.

**personal details requirement** see section 81(5).

**place** includes premises and vacant land and, for part 7, includes a vehicle, boat or ship.

**possible major hazard facility** see section 31(2).

**premises** includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) land where a building or other structure is situated.

**recognised standard** means a recognised standard made by the Minister under section 29.

**risk** see section 15.

**safety management system**—

- (a) for a major hazard facility, means a safety management system that complies with section 45; or
- (b) for a dangerous goods location, means a safety management system that complies with section 53.

**safety obligations** see section 16.

**safety report** see section 47.

**serious danger** is danger that has the potential to cause serious harm.

**serious harm** is harm that—

- (a) causes the death of a person; or
- (b) impairs a person to such an extent that because of the harm the person becomes an overnight or longer stay patient in a hospital; or
- (c) results in costs of more than \$50000 being incurred to prevent, minimise or repair harm to property or the environment.

## Schedule 2 (continued)

***Standards Australia*** means Standards Australia International Ltd ACN 087 326 690.

***storage or handling system*** means any of the following used in connection with the storage or handling of dangerous goods or combustible liquids—

- (a) a container;
- (b) spill containment system;
- (c) pipework;
- (d) firefighting or fire protection system;
- (e) any other plant.

***systematic risk assessment***, means a systematic risk assessment under section 41.

***witness requirement notice*** see section 139(1).

***workplace*** means a workplace under the *Workplace Health and Safety Act 1995*, section 9.

## Endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 31 December 2004. Future amendments of the Dangerous Goods Safety Management Act 2001 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

| Key    | Explanation                    | Key     | Explanation                             |
|--------|--------------------------------|---------|---|
| AIA    | = Acts Interpretation Act 1954 | (prev)  | = previously                            |
| amd    | = amended                      | proc    | = proclamation                          |
| amdt   | = amendment                    | prov    | = provision                             |
| ch     | = chapter                      | pt      | = part                                  |
| def    | = definition                   | pubd    | = published                             |
| div    | = division                     | R[X]    | = Reprint No.[X]                        |
| exp    | = expires/expired              | RA      | = Reprints Act 1992                     |
| gaz    | = gazette                      | reloc   | = relocated                             |
| hdg    | = heading                      | renum   | = renumbered                            |
| ins    | = inserted                     | rep     | = repealed                              |
| lap    | = lapsed                       | (retro) | = retrospectively                       |
| notfd  | = notified                     | rv      | = revised edition                       |
| o in c | = order in council             | s       | = section                               |
| om     | = omitted                      | sch     | = schedule                              |
| orig   | = original                     | sdiv    | = subdivision                           |
| p      | = page                         | SIA     | = Statutory Instruments Act 1992        |
| para   | = paragraph                    | SIR     | = Statutory Instruments Regulation 2002 |
| prec   | = preceding                    | SL      | = subordinate legislation               |
| pres   | = present                      | sub     | = substituted                           |
| prev   | = previous                     | unnum   | = unnumbered                            |

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

| Reprint No. | Amendments to   | Effective  | Reprint date |
|-------------|-----------------|------------|--------------|
| 1           | 2001 Act No. 45 | 7 May 2002 | 7 May 2002   |

  

| Reprint No. | Amendments included | Effective        | Notes                 |
|-------------|---------------------|------------------|-----------------------|
| 1A          | 2003 Act No. 19     | 9 May 2003       |                       |
| 1B          | 2003 Act No. 29     | 1 July 2003      |                       |
| 1C          | 2004 Act No. 25     | 31 December 2004 | R1C withdrawn, see R2 |
| 2           | —                   | 31 December 2004 |                       |

## 5 List of legislation

### **Dangerous Goods Safety Management Act 2001 No. 28**

date of assent 25 May 2001

ss 1–2 commenced on date of assent

ss 29–30, 54–61, 113–125, 181, 185–186(1), sch 2 commenced 7 November 2001 (2001 SL No. 191)

remaining provisions commenced 7 May 2002 (2002 SL No. 86)

amending legislation—

### **Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

### **Statute Law (Miscellaneous Provisions) Act 2003 No. 19 ss 1, 3 sch**

date of assent 9 May 2003

commenced on date of assent

### **Gas Supply Act 2003 No. 29 ss 1–2, ch 8 pt 1**

date of assent 23 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2003 SL No. 121)

**Petroleum and Gas (Production and Safety) Act 2004 No. 25 ss 1, 2(2), ch 16 pt 4**  
 date of assent 12 October 2004  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 31 December 2004 (2004 SL No. 308)

## **6 List of annotations**

### **Application of Act**

**s 3** amd 2003 No. 29 s 342; 2004 No. 25 s 889

### **Notice of major accident**

**s 126** amd 2004 No. 25 s 890

### **Service of documents**

**s 176** amd 2001 No. 45 s 29 sch 3

## **PART 13—AMENDMENT OF ACTS AND REGULATIONS**

**pt 13 (s 189)** om R1 (see RA ss 7(1)(k) and 40)

## **SCHEDULE 1—AMENDMENTS OF ACTS AND REGULATIONS**

om R1 (see RA s 40)

## **SCHEDULE 2—DICTIONARY**

def “**emergency services**” amd 2003 No. 19 s 3 sch

## **7 List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette. Because failure to notify or publish a form in the gazette does not invalidate the form, it may be necessary to check with the relevant government department for the latest information about forms (see SIA s 58(8)).)

### **Form 1 Version 3—Notification of a Large Dangerous Goods Location (LP Gas, Flammable Liquids and/or Combustible Liquids only)**

pubd gaz 26 March 2004 p 1141

### **Form 2 Version 3—Notification of a Large Dangerous Goods Location (all classes and types of stated dangerous goods and combustible liquids)**

pubd gaz 26 March 2004 p 1146

### **Form 3 Version 3—Notification of Possible Major Hazard Facility**

pubd gaz 14 October 2005 pp 592–7

### **Form 11 Version 1—Dangerous Goods Safety Management Infringement Notice**

pubd gaz 3 May 2002 p 81

### **Form 12 Version 1—Further notification of Large Dangerous Goods Location**

pubd gaz 26 March 2004 p 1158

