

2003

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Industrial Relations)

## **Dangerous Substances Bill 2003**

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2003

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Industrial Relations)

## **Dangerous Substances Bill 2003**

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### **A Bill for**

An Act about dangerous substances, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Chapter 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Dangerous Substances Act 2003*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written  
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on  
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be  
10 fixed, for the commencement of different provisions (see Legislation  
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the  
13 notification day, it automatically commences on the first day after that  
14 period (see Legislation Act, s 79).

15 **3 Dictionary**

16 The dictionary at the end of this Act is part of this Act.

17 *Note 1* The dictionary at the end of this Act defines certain terms used in this  
18 Act, and includes references (*signpost definitions*) to other terms  
19 defined elsewhere.

20 For example, the signpost definition '*infringement notice*—see the  
21 *Magistrates Court Act 1930*, section 117.' means that the term  
22 'infringement notice' is defined in that section and the definition applies  
23 to this Act.

24 *Note 2* A definition in the dictionary (including a signpost definition) applies to  
25 the entire Act unless the definition, or another provision of the Act,  
26 provides otherwise or the contrary intention otherwise appears (see  
27 Legislation Act, s 155 and s 156 (1)).

1 **4 Notes**

2 A note included in this Act is explanatory and is not part of this Act.

3 *Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4 **5 Offences against Act—application of Criminal Code etc**

5 Other legislation applies in relation to offences against this Act.

6 *Note 1 Criminal Code*

7 The Criminal Code, ch 2 applies to all offences against this Act (see  
8 Code, pt 2.1).

9 The chapter sets out the general principles of criminal responsibility  
10 (including burdens of proof and general defences), and defines terms  
11 used for offences to which the Code applies (eg *conduct*, *intention*,  
12 *recklessness* and *strict liability*).

13 *Note 2 Penalty units*

14 The Legislation Act, s 133 deals with the meaning of offence penalties  
15 that are expressed in penalty units.

1 **Chapter 2**                    **Important concepts**

2 **Part 2.1**                    **Operation of Act**

3 **6**            **Purpose of Act**

4        (1) The purpose of this Act is to protect the health and safety of people,  
5            and to protect property and the environment from damage, from the  
6            hazards associated with dangerous substances.

7        (2) The purpose of this Act includes the following:

8            (a) to eliminate the hazards associated with dangerous substances;

9            (b) if it is not reasonably practicable to eliminate the hazards—to  
10            minimise as far as reasonably practicable the risks resulting  
11            from the hazards by, for example—

12                    (i) ensuring that the hazards are identified and the risks are  
13                    assessed and controlled; and

14                    (ii) requiring information and training about the hazards and  
15                    the safe handling of the substances to be made available  
16                    to people handling the substances;

17            (c) to allocate responsibilities to people in relation to dangerous  
18            substances;

19            (d) to regulate dangerous substances, including by providing for  
20            authorisation, licensing, notification and registration schemes  
21            for dangerous substances.

22        *Note*        An example is part of the Act, is not exhaustive and may extend, but  
23                    does not limit, the meaning of the provision in which it appears (see  
24                    Legislation Act, s 126 and s 132).



1 **7 Exclusions from Act**

2 (1) This Act does not apply to the following:

- 3 (a) the transmission, distribution and use of natural gas to which  
4 the *Gas Safety Act 2000* or *Utilities Act 2000* applies;
- 5 (b) the transmission, distribution and use of LPG to which the *Gas*  
6 *Safety Act 2000* applies;
- 7 (c) ammunition under the *Firearms Act 1996*, other than the  
8 manufacture or transport of ammunition;
- 9 (d) an infectious substance under the *Clinical Waste Act 1990*;
- 10 (e) a radioactive substance under the *Radiation Act 1983*;
- 11 (f) anything else prescribed under the regulations.

12 (2) In this section:

13 *LPG*—see the *Gas Safety Act 2000*, dictionary, definition of *gas*,  
14 paragraph (b).

15 **8 Relationship of Act to other laws**

16 (1) The duties under this Act in relation to dangerous substances are in  
17 addition to duties in relation to them under any other law in force in  
18 the ACT.

19 *Note 1* A reference to an Act includes a reference to statutory instruments made  
20 or in force under the Act, including regulations and any law or  
21 instrument applied, adopted or incorporated by the Act (see Legislation  
22 Act, s 104).

23 *Note 2* Other legislation in force in the ACT relating to dangerous substances  
24 includes the following:

- 25 • *Environment Protection Act 1997*  
26 • *Occupational Health and Safety Act 1989*  
27 • *Poisons Act 1933*  
28 • *Poisons and Drugs Act 1978*

Section 9

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- 1                    • *Road Transport Reform (Dangerous Goods) Act 1995 (Cwlth)*.  
2            *Note 3*    See the *Road Transport Reform (Dangerous Goods) Act 1995 (Cwlth)*,  
3                    and the regulations made under that Act, for the transport of dangerous  
4                    substances (other than explosives, infectious substances and radioactive  
5                    substances) that are classified as dangerous goods under that Act.  
6            *Note 4*    Territory laws have no effect to the extent that they are inconsistent  
7                    with a Commonwealth law (see *Australian Capital Territory (Self-*  
8                    *Government) Act 1988 (Cwlth)*, s 28).

- 9            (2)    A duty or power under another Territory law in relation to a  
10                  dangerous substance has no effect to the extent that it is inconsistent  
11                  with a duty under this Act in relation to the substance.  
12            (3)    However, a duty or power under another Territory law in relation to  
13                  a dangerous substance must not be taken to be inconsistent with a  
14                  duty under this Act to the extent that they can operate concurrently.

15    **9        Relationship of regulations to approved codes of practice**  
16                    **and incorporated documents**

- 17            (1)    An approved code of practice or incorporated document has no  
18                  effect to the extent that it is inconsistent with the regulations.  
19            (2)    However, an approved code of practice or incorporated document  
20                  must not be taken to be inconsistent with the regulations to the  
21                  extent that they can operate concurrently.  
22            *Note 1*    For the approval of codes of practice, see s 219.  
23            *Note 2*    For the meaning of *incorporated document*, see the dictionary.  
24            *Note 3*    For the availability and the appropriate edition (if any) of an  
25                  incorporated document, see s 206 and s 220.

1 **Part 2.2** **Important terms**

2 **10** **Meaning of *dangerous substance***

3 (1) For this Act, a substance is a *dangerous substance* if it—

- 4 (a) can be classified as an explosive substance or explosive article  
5 under the Australian Explosives Code; or
- 6 (b) is listed in the Australian Explosives Code, appendix 1 or  
7 appendix 2; or
- 8 (c) can be classified as a dangerous good under the Australian  
9 Dangerous Goods Code; or
- 10 (d) is listed as a dangerous good or good too dangerous to be  
11 carried in the Australian Dangerous Goods Code, appendix 1,  
12 appendix 2 or appendix 5; or
- 13 (e) can be classified as a combustible liquid under Australian  
14 Standard 1940; or
- 15 (f) can be classified as a hazardous substance under the NOHSC  
16 approved criteria; or
- 17 (g) is listed as a hazardous substance under the NOHSC List of  
18 Designated Hazardous Substances; or
- 19 (h) is declared under the regulations to be a dangerous substance;  
20 or
- 21 (i) is declared in writing by the Minister to be a dangerous  
22 substance.

23 *Note* For the meaning of *substance*, see the dictionary.

24 (2) A declaration under subsection (1) (i) is a disallowable instrument.

25 *Note* A disallowable instrument must be notified, and presented to the  
26 Legislative Assembly, under the Legislation Act.

- 1 (3) In this Act:
- 2 *Australian Dangerous Goods Code* means the *Australian Code for*  
3 *the Transport of Dangerous Goods by Road and Rail*, published by  
4 the Commonwealth.
- 5 *Australian Explosives Code* means the *Australian Code for the*  
6 *Transport of Explosives by Road and Rail*, published by the  
7 Commonwealth.
- 8 *Australian Standard 1940* means Australian Standard 1940, *The*  
9 *Storage and Handling of Flammable and Combustible Liquids*.
- 10 *NOHSC approved criteria* means the *Approved Criteria for*  
11 *Classifying Hazardous Substances* approved by the National  
12 Occupational Health and Safety Commission under the *National*  
13 *Occupational Health and Safety Commission Act 1985* (Cwlth).
- 14 *NOHSC List of Designated Hazardous Substances* means the *List*  
15 *of Designated Hazardous Substances* approved by the National  
16 Occupational Health and Safety Commission under the *National*  
17 *Occupational Health and Safety Commission Act 1985* (Cwlth).
- 18 (4) For this Act, a reference to a document mentioned in subsection (3)  
19 is a reference to—
- 20 (a) the document in effect at the commencement of this section;  
21 and
- 22 (b) if the document is amended after the commencement of this  
23 section, and an incorporated document notice under section  
24 220 for the amendment is notified—the document as amended  
25 by the amendment; and
- 26 (c) if the document (or a replacement document mentioned in this  
27 paragraph) is replaced by another document after the  
28 commencement, and an incorporated document notice under  
29 section 220 for the replacement is notified—the replacement  
30 document; and

- 1 (d) if a replacement document mentioned in paragraph (c) is  
2 amended, and an incorporated document notice under  
3 section 220 for the amendment is notified—the replacement  
4 document as amended.

5 *Note* For the meaning of *notification*, see Legislation Act, s 63

6 **Example of replacement document**

7 a new edition of an incorporated document published after the commencement of  
8 this section

9 *Note* An example is part of the Act, is not exhaustive and may extend, but  
10 does not limit, the meaning of the provision in which it appears (see  
11 Legislation Act, s 126 and s 132).

12 **11 Handle a dangerous substance**

13 For this Act, *handle* a dangerous substance includes the following:

- 14 (a) import or export the substance;  
15 (b) manufacture, process or treat the substance;  
16 (c) supply, receive or dispense the substance;  
17 (d) mark or label an article, container or package of the substance,  
18 or placard or put up signs in relation to the substance;  
19 (e) pack, consign or carry the substance;  
20 (f) store the substance;  
21 (g) possess, or otherwise have custody or control of, the substance;  
22 (h) use the substance;  
23 (i) dispose of the substance or render it harmless.

24 **Examples for par (d)**

- 25 1 label a container of a dangerous substance in accordance with the Australian  
26 Dangerous Goods Code  
27 2 put up warning signs around a factory about hazards associated with a  
28 dangerous substance used at the factory

1            3    attach a placard to a building that includes the hazchem code under the  
2                    Australian Dangerous Goods Code for a dangerous substance stored at the  
3                    building

4            *Note 1*    The dictionary defines the following terms:

- 5                    • carry
- 6                    • dispose of
- 7                    • export
- 8                    • import
- 9                    • manufacture
- 10                    • supply.

11            *Note 2*    An example is part of the Act, is not exhaustive and may extend, but  
12                    does not limit, the meaning of the provision in which it appears (see  
13                    Legislation Act, s 126 and s 132).

## 14    **12    *Non-commercial* handling of a dangerous substance**

15            For this Act, the handling of a dangerous substance is ***non-***  
16            ***commercial*** if the handling does not take place in the course of trade  
17            or commerce.

18            *Note*        For the meaning of ***trade or commerce***, see the dictionary.

## 19    **13    *Correctly* classified for a dangerous substance**

20            (1) For this Act, a dangerous substance is ***correctly*** classified if—

21                    (a) if the regulations apply to the classification of the substance—  
22                    the substance is classified in accordance with the regulations;  
23                    or

24                    (b) if a declaration under subsection (2) applies to the  
25                    classification of the substance—the substance is classified in  
26                    accordance with the declaration; or

- 1 (c) in any other case—the substance is classified in accordance  
2 with an incorporated document applying to the classification of  
3 the substance.

4 *Note 1* For the meaning of *incorporated document*, see the dictionary.

5 *Note 2* An incorporated document has no effect to the extent that it is  
6 inconsistent with the regulations (see s 9 (1)).

- 7 (2) The Minister may declare in writing—

8 (a) that a dangerous substance belongs, or does not belong, to a  
9 stated classification (however described) of dangerous  
10 substances; or

11 (b) a method for classifying a stated dangerous substance.

12 (3) A declaration under subsection (2) has no effect to the extent that it  
13 is inconsistent with the regulations.

14 (4) A declaration under subsection (2) is a disallowable instrument.

15 *Note* A disallowable instrument must be notified, and presented to the  
16 Legislative Assembly, under the Legislation Act.

17 **14 Correctly for packed, stored, labelled and placarded**

18 (1) For this Act, a dangerous substance is *correctly* packed or stored  
19 if—

20 (a) if the regulations apply to the packing or storage of the  
21 substance—the substance is packed or stored in accordance  
22 with the regulations; or

23 (b) if an incorporated document applies to the packing or storage  
24 of the substance—the substance is packed or stored in  
25 accordance with the incorporated document; or

- 1            (c) in any other case—the substance is packed or stored in a way  
2            that eliminates the hazards associated with the substance or, if  
3            this is not reasonably practicable, minimises the risks resulting  
4            from the hazards as far as is reasonably practicable.

5            *Note 1* For the meaning of *incorporated document*, see the dictionary.

6            *Note 2* An incorporated document has no effect to the extent that it is  
7            inconsistent with the regulations (see s 9 (1)).

- 8            (2) For this Act, a dangerous substance is *correctly* labelled or  
9            placarded if—

10            (a) if the regulations apply to the labelling or placarding of the  
11            substance—the substance is labelled or placarded in  
12            accordance with the regulations; or

13            (b) in any other case—the substance is labelled or placarded in  
14            accordance with an incorporated document (if any) applying to  
15            the labelling or placarding of the substance.

16            **15    Meaning of *hazard* and *risk***

- 17            (1) For this Act, a *hazard* is a thing (including an intrinsic property of a  
18            thing), or a situation, with potential to—

19            (a) kill or injure a person; or

20            (b) damage property or the environment.

- 21            (2) For this Act, a *risk* is the likelihood of death or harm to a person, or  
22            damage to property or the environment, from a hazard.



- 1 **16** ***Reasonable steps for a risk***
- 2 (1) The regulations may prescribe what are, or are not, ***reasonable steps***  
3 in relation to a risk.
- 4 (2) However, if the regulations do not prescribe what are, or are not  
5 reasonable steps in relation to a risk, all of the following must be  
6 considered in working out whether ***reasonable steps*** have been  
7 taken to minimise the risk:
- 8 (a) the seriousness of the risk;
- 9 (b) the current state of knowledge about—
- 10 (i) the hazard giving rise to the risk and the risk itself; and  
11 (ii) any ways of eliminating the hazard or minimising the  
12 risk;
- 13 (c) the availability and suitability of ways to eliminate the hazard  
14 or minimise the risk;
- 15 (d) the cost of eliminating the hazard or minimising the risk;
- 16 (e) anything else prescribed under the regulations.
- 17 **17** ***Person in control for premises, plant etc***
- 18 (1) For this Act, a ***person in control*** is—
- 19 (a) for the handling of a dangerous substance—anyone who has  
20 control of the handling of the substance (including anyone with  
21 authority to make decisions about the handling of the  
22 substance); or
- 23 (b) for premises—anyone who has control of the premises  
24 (including anyone with authority to make decisions about the  
25 management of the premises); or

- 1 (c) for plant or a system for handling a dangerous substance—  
2 anyone who has control of the plant or system or the operation  
3 of the plant or system (including anyone with authority to  
4 make decisions about the plant or system or the operation of  
5 the plant or system); or
- 6 (d) for the design, manufacture, import or supply of plant or a  
7 system for handling a dangerous substance—anyone who has  
8 control of the design, manufacture, import or supply of the  
9 plant or system (including anyone with authority to make  
10 decisions about the design, manufacture, import or supply); or
- 11 (e) anyone else prescribed under the regulations.

12 *Note* **Plant** includes a building or other structure (see dict).

- 13 (2) To remove any doubt, more than 1 person may be a person in  
14 control for a duty under this Act.

15 **18 *Responsible person for a dangerous substance***

- 16 (1) For this Act, a person is a ***responsible person*** for a dangerous  
17 substance if the person is—
- 18 (a) a person in control of the handling of the substance; or
- 19 (b) a person in control of premises where the substance is handled;  
20 or
- 21 (c) a person in control of plant or a system for handling the  
22 substance.
- 23 (2) To remove any doubt, more than 1 person may be a responsible  
24 person for a duty under this Act.

1 **19 What is a *safety management system***

2 (1) A *safety management system* for handling a dangerous substance is  
3 a system that does each of the following:

4 (a) identifies the hazards associated with the substance, having  
5 regard to the current state of knowledge about the hazards;

6 (b) identifies and assesses the risks resulting from the identified  
7 hazards, having regard to the current state of knowledge about  
8 the risks;

9 (c) controls the risks by eliminating the hazards or, if this is not  
10 reasonably practicable, minimising the risks as far as  
11 reasonably practicable;

12 (d) provides for how compliance with the system is to be  
13 documented;

14 (e) complies with any requirements prescribed under the  
15 regulations (either in addition to or instead of a requirement  
16 mentioned in paragraphs (a) to (d)).

17 **Example for par (e)**

18 The regulations may provide that a supplier of a stated dangerous substance may  
19 identify the hazards associated with the substance, and identify and assess the  
20 risks resulting from the hazards, by reviewing the safety information supplied by  
21 the substance's manufacturer under section 26 (1) (e) instead of complying with  
22 subsections (2) and (3).

23 *Note* An example is part of the Act, is not exhaustive and may extend, but  
24 does not limit, the meaning of the provision in which it appears (see  
25 Legislation Act, s 126 and s 132).

26 (2) For subsection (1) (a), the matters that must be considered in  
27 identifying the hazards include, for example—

28 (a) the chemical and physical properties of the dangerous  
29 substance; and

- 1 (b) any chemical and physical reactions that may happen if the  
2 substance comes into contact with other substances; and
- 3 (c) the premises, plant and systems for handling the substance; and
- 4 (d) anything else prescribed under the regulations for this  
5 subsection.
- 6 **Examples for par (c)**
- 7 1 access to the premises or plant at the premises, including access by members  
8 of the public
- 9 2 the design, physical location and arrangement of areas and plant
- 10 3 the characteristics of the materials used in plant
- 11 4 activities, systems of work and non-dangerous substances that could interact  
12 with the substance
- 13 *Note* **Plant** includes a building or other structure (see dict).
- 14 (3) For subsection (1) (b), the matters that must be considered in  
15 identifying and assessing the risks include, for example—
- 16 (a) the matters mentioned in subsection (2); and
- 17 (b) the consequences, at premises where the dangerous substance  
18 is to be handled and elsewhere, of incidents that may happen  
19 because of the handling of the substance at the premises; and
- 20 (c) anything else prescribed under the regulations for this  
21 subsection.
- 22 (4) For subsection (1) (c), the matters that must be considered in  
23 controlling the risks include, for example—
- 24 (a) implementing, operating, maintaining and repairing systems to  
25 ensure the dangerous substance is handled safely; and
- 26 (b) allocating responsibilities to people involved in the handling of  
27 the substance to ensure the substance is handled safely; and
- 28 (c) appropriately inducting or supervising people handling the  
29 substance; and

1 (d) giving appropriate information, education and training to  
2 people handling the substance about the hazards associated  
3 with the substance, and the risks resulting from them; and

4 (e) anything else prescribed under the regulations.

5 **Examples of systems for par (a)**

- 6 1 safe systems of work and safe handling systems  
7 2 security systems for premises where the substance is manufactured or stored  
8 3 a system to identify and rectify any incidents of noncompliance (including  
9 minimising any risks resulting from the noncompliance) with the safety  
10 management system

1 **Part 2.3 Complying with Act**

2 **20 Person may have more than 1 duty under Act**

3 To remove any doubt, a person may be subject to more than 1 duty  
4 under this Act.

5 **Example**

6 A supplier of a dangerous substance must comply with the general safety duty  
7 applying to everyone handling a dangerous substance (see s 23) and with the  
8 supplier's particular duties under section (2).

9 If the supplier is a person in control of premises, the supplier must also comply  
10 with the safety duties of a person in control of premises (see s 31).

11 *Note 1* A reference to an Act includes a reference to statutory instruments made  
12 or in force under the Act, including regulations and any law or  
13 instrument applied, adopted or incorporated by the Act (see Legislation  
14 Act, s 104).

15 *Note 2* An example is part of this Act, is not exhaustive and may extend, but  
16 does not limit, the meaning of the provision in which it appears (see  
17 Legislation Act, s 126 and s 132).

18 **21 Person not relieved of duty because someone else also**  
19 **has same duty**

20 (1) This section applies if 2 or more people have the same duty under  
21 this Act.

22 (2) To remove any doubt, each person must comply with the duty  
23 whether or not someone else may also be required to comply with  
24 the duty.

- 1 (3) However, if this Act requires or allows them to do something, it is  
2 sufficient if 1 of them does the thing.

3 **Example**

4 If 2 people are in control of premises where a dangerous substance is handled, it is  
5 sufficient if 1 of them prepares the safety management system required under  
6 section 31 (1). However, if the safety management system is not prepared, each  
7 of them is responsible for the failure to comply with the duty to ensure that the  
8 safety management system is prepared.

9 *Note* An example is part of this Act, is not exhaustive and may extend, but  
10 does not limit, the meaning of the provision in which it appears (see  
11 Legislation Act, s 126 and s 132).

12 **22 Incorporated documents and approved codes of practice**  
13 **may be considered**

14 An incorporated document, or approved code of practice applying to  
15 a duty under this Act may be considered in deciding whether a  
16 person has complied with the duty.

17 *Note* For the meaning of *incorporated document* and *approved code of*  
18 *practice*, see the dictionary.

1 **Chapter 3** **Safety duties for dangerous**  
2 **substances**

3 **Part 3.1** **Safety duties**

4 **Division 3.1.1** **General safety duty of everyone**

5 **23** **General safety duty of everyone involved in handling**  
6 **dangerous substances anywhere**

7 (1) Everyone involved in handling a dangerous substance must take all  
8 reasonable steps to minimise the risks resulting from handling the  
9 substance.

10 *Note 1* A failure to comply with this section may be an offence (see pt 3.2).

11 *Note 2* **Handling** a dangerous substance includes importing, manufacturing,  
12 storing, supplying, possessing, receiving or using the substance (see  
13 s (4)).

14 (2) To remove any doubt, this section applies to the handling of a  
15 dangerous substance whether or not the handling is a non-  
16 commercial handling of the substance.

17 *Note* For the meaning of *non-commercial*, see s 12.

18 **Division 3.1.2** **Handling of dangerous substances**  
19 **in trade or commerce**

20 **24** **Application of div 3.1.2**

21 This division does not apply in relation to the non-commercial  
22 handling of a dangerous substance.

23 *Note* For the meaning of *non-commercial*, see s 12.



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1 **25 Safety management system required for certain people in**  
2 **control of handling dangerous substances**

- 3 (1) This section applies to a person in control of—  
4 (a) the manufacture, import or supply of a dangerous substance; or  
5 (b) any other handling of a dangerous substance prescribed under  
6 the regulations.
- 7 (2) The person must—  
8 (a) ensure that a safety management system for handling the  
9 dangerous substance is prepared and documented; and  
10 (b) take all reasonable steps to ensure that—  
11 (i) the safety management system is implemented and kept  
12 up to date; and  
13 (ii) everyone to whom the safety management system applies  
14 complies with their duties under the system; and  
15 (iii) people's compliance with their duties under the safety  
16 management system is documented under the system.

17 *Note 1* A failure to comply with this section may be an offence (see pt 3.2).

18 *Note 2* A person in control of premises is also required to have a safety  
19 management system for the handling of dangerous substances at the  
20 premises (see s 31).

21 **26 Particular safety duties of manufacturers**

- 22 (1) A person in control of the manufacture of a dangerous substance  
23 must—  
24 (a) ensure that the substance is correctly classified as soon as  
25 practicable after its manufacture, but before it is supplied to  
26 anyone after its manufacture; and

- 1 (b) take all reasonable steps to ensure that the substance is in a  
2 condition that is safe for handling by anyone after its  
3 manufacture; and
- 4 (c) if the substance is packed by the manufacturer—ensure that the  
5 substance is correctly packed and labelled before the  
6 manufacturer supplies it to anyone; and
- 7 (d) if the substance is stored by the manufacturer—ensure that the  
8 manufacturer correctly stores and placards the substance; and
- 9 (e) ensure that the safety information prescribed under the  
10 regulations for the substance is prepared, kept up to date and  
11 supplied in accordance with the regulations.

12 *Note* A failure to comply with this section may be an offence (see pt 3.2).

- 13 (2) Subsection (1) (c) does not require the dangerous substance to be  
14 labelled if the substance is not required to be labelled under the  
15 regulations or an incorporated document.
- 16 (3) Subsection (1) (d) does not require the dangerous substance to be  
17 placarded if the substance is not required to be placarded under the  
18 regulations or an incorporated document.

## 19 **27 Particular safety duties of importers**

- 20 (1) A person in control of the import of a dangerous substance must—
- 21 (a) ensure that the substance is correctly classified before it is  
22 imported; and
- 23 (b) take all reasonable steps to ensure that the substance is in a  
24 condition that is safe for handling by anyone after its import;  
25 and
- 26 (c) if the substance is packed by the importer—ensure that the  
27 substance is correctly packed and labelled before the importer  
28 supplies it to anyone; and

- 1 (d) if the substance is stored by the importer—ensure that the  
2 importer correctly stores and placards the substance; and
- 3 (e) ensure that the safety information prescribed under the  
4 regulations for the substance is prepared, kept up to date and  
5 supplied in accordance with the regulations.
- 6 *Note 1* A failure to comply with this section may be an offence (see pt 3.2).
- 7 *Note 2* **Import** means import into the ACT (see dict).
- 8 (2) Subsection (1) (c) does not require the dangerous substance to be  
9 labelled if the substance is not required to be labelled under the  
10 regulations or an incorporated document.
- 11 (3) Subsection (1) (d) does not require the dangerous substance to be  
12 placarded if the substance is not required to be placarded under the  
13 regulations or an incorporated document.

14 **28 Particular safety duties of suppliers**

- 15 (1) A person in control of the supply of a dangerous substance must—
- 16 (a) ensure that the substance is correctly classified before the  
17 supplier supplies it to anyone; and
- 18 (b) take all reasonable steps to ensure that the substance is in a  
19 condition that is safe for handling by anyone after the supplier  
20 supplies it; and
- 21 (c) ensure that the substance is correctly packed and labelled  
22 before the supplier supplies it to anyone; and
- 23 (d) if the substance is stored by the supplier—ensure that the  
24 supplier correctly stores and placards the substance; and

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1 (e) ensure that the safety information prescribed under the  
2 regulations for the substance is prepared, kept up to date,  
3 supplied and made available in accordance with the  
4 regulations.

5 *Note* A failure to comply with this section may be an offence (see pt 3.2).

6 (2) Subsection (1) (c) does not require the dangerous substance to be  
7 labelled if the substance is not required to be labelled under the  
8 regulations or an incorporated document.

9 (3) Subsection (1) (d) does not require the dangerous substance to be  
10 placarded if the substance is not required to be placarded under the  
11 regulations or an incorporated document.

12 **Division 3.1.3 Premises where dangerous**  
13 **substances are handled in trade or**  
14 **commerce**

15 **29 Application of div 3.1.3**

16 (1) This division does not apply in relation to the non-commercial  
17 handling of a dangerous substance at premises.

18 *Note 1* **At** premises includes in or on the premises (see dict).

19 *Note 2* For the meaning of **non-commercial**, see s 12.

20 (2) If the premises are residential premises, this division does not apply  
21 to the part of the premises used for the non-commercial handling of  
22 the substance.

23 *Note* **Premises** includes any part of an area of land or a structure or vehicle  
24 (see dict).

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1 **30 Safety duties of everyone at premises**

2 (1) Everyone at premises where a dangerous substance is handled must  
3 take all reasonable steps to minimise the risks resulting from the  
4 handling of the substance at the premises.

5 *Note 1* A failure to comply with this section may be an offence (see pt 3.2).

6 *Note 2* *At* premises includes in or on the premises (see dict).

7 (2) A person at premises where a dangerous substance is handled  
8 must—

9 (a) comply with any requirement applying to the person under any  
10 safety management system for the handling of the substance at  
11 the premises; and

12 (b) comply with any instructions relating to the safe handling of  
13 the substance at the premises given to the person by a  
14 responsible person for the substance; and

15 (c) comply with, or otherwise act in accordance with, notices and  
16 signs (including placards and warning signs) at the premises  
17 relating to safety or the substance; and

18 (d) not remove, alter, damage, deface or cover any current label,  
19 notice, sign or placard at the premises relating to safety or the  
20 substance; and

21 (e) tell a responsible person for the substance about anything at the  
22 premises that the person believes is likely to cause a dangerous  
23 occurrence.

24 **Examples of things that might be reported for par (e)**

- 25 1 the misuse of the dangerous substance by someone  
26 2 an accident in relation to the handling of the dangerous substance  
27 3 faulty equipment used for handling the dangerous substance

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1           4    someone not following the requirements of a safety management system

2           *Note 1*   For the meaning of *responsible person*, see s 18.

3           *Note 2*   An example is part of the Act, is not exhaustive and may extend, but  
4           does not limit, the meaning of the provision in which it appears (see  
5           Legislation Act, s 126 and s 132).

6    **31    Safety duties of people in control of premises**

7    (1) A person in control of premises where a dangerous substance is  
8    handled must—

9           (a) ensure that a safety management system for handling the  
10          substance at the premises is prepared and documented; and

11          (b) take all reasonable steps to ensure that—

12                  (i) the safety management system is implemented and kept  
13                  up to date; and

14                  (ii) everyone to whom the safety management system applies  
15                  complies with their duties under the system; and

16                  (iii) people’s compliance with their duties under the safety  
17                  management system is documented under the system.

18          *Note*    A failure to comply with this section may be an offence (see pt 3.2).

19    (2) A person in control of premises where a dangerous substance is  
20    handled must take all reasonable steps to ensure that—

21          (a) the premises (including any plant or systems at the premises  
22          for handling the substance) are safe to handle the substance;  
23          and

24          (b) if the premises, or anything (including plant or equipment) at  
25          the premises, is to be disposed of—the premises or thing is,  
26          before its disposal, thoroughly cleaned so that it is free from  
27          the substance or is otherwise made safe; and

- 1 (c) if the premises, or anything (including plant or equipment) at  
2 the premises, is no longer to be used for handling the  
3 substance—the premises or thing is thoroughly cleaned so that  
4 it is free from the substance or is otherwise made safe.

5 *Note 1* **Premises** includes land or a structure or vehicle and any part of an area  
6 of land or a structure or vehicle and **at** premises includes in or on the  
7 premises (see dict).

8 *Note 2* For other provisions relevant to the decontamination of land, see the  
9 *Environment Protection Act 1997*.

10 **Division 3.1.4 Plant and systems for handling**  
11 **dangerous substances for trade or**  
12 **commerce**

13 **32 Application of div 3.1.4**

14 This division (other than section 33) does not apply in relation to  
15 plant or a system for the non-commercial handling of a dangerous  
16 substance.

17 *Note* For the meaning of *non-commercial*, see s 12.

18 **33 General safety duties for plant and systems**

- 19 (1) Everyone involved in the design, manufacture, import, supply,  
20 installation, commissioning, operation, maintenance, repair,  
21 decommissioning, dismantling or disposal of plant or a system for  
22 handling a dangerous substance must take all reasonable steps to  
23 minimise the risks resulting from the handling of the substance by  
24 the plant or system.

25 *Note 1* **Plant** includes a building or other structure (see dict).

26 *Note 2* A failure to comply with this section may be an offence (see pt 3.2).

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<b>Part 3.1</b>	Safety duties
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- 1 (2) A person operating, maintaining or repairing the plant or system  
2 must tell a relevant person about—
- 3 (a) anything in relation to the plant or system that the person  
4 believes is likely to cause a dangerous occurrence; and
- 5 (b) anything else that the person believes is a defect in the plant or  
6 system.
- 7 (3) To remove any doubt, this section applies to all plant and systems  
8 for handling a dangerous substance, whether or not the handling is a  
9 non-commercial handling of the substance.
- 10 (4) In this section:
- 11 *relevant person*, for plant or a system, means—
- 12 (a) a person in control of the plant or system; or
- 13 (b) a person in control of the premises where the plant or system is  
14 located.
- 15 *Note* For the meaning of *person in control*, see s 17.

16 **34 Safety duties of people in control of plant and systems**

- 17 (1) A person in control of plant or a system for handling a dangerous  
18 substance must—
- 19 (a) ensure that a safety management system for the handling of the  
20 substance by the plant or system is prepared and documented;  
21 and
- 22 (b) take all reasonable steps to ensure that—
- 23 (i) the safety management system is implemented and kept  
24 up to date; and
- 25 (ii) everyone to whom the safety management system applies  
26 complies with their duties under the system; and



1 (iii) people's compliance with their duties under the safety  
2 management system is documented under the system.

3 *Note* A failure to comply with this section may be an offence (see pt 3.2).

4 (2) A person in control of plant or a system for handling a dangerous  
5 substance must—

6 (a) take all reasonable steps to ensure that the plant or system is  
7 safe to handle the substance; and

8 (b) take all reasonable steps to ensure that the plant or system is  
9 installed and operated safely, and appropriately maintained,  
10 repaired and tested; and

11 *Note* For requirements to provide information about the operation,  
12 maintenance and repair of plant or a system, see s 35 (1) (b) and  
13 s 36 (b).

14 (c) if the person becomes aware of a hazard or defect in relation to  
15 the plant or system—

16 (i) take all reasonable steps to ensure that the plant or system  
17 is operated, modified, maintained or repaired to eliminate  
18 the hazard, correct the defect or minimise the risks  
19 resulting from the hazard or defect; and

20 (ii) ensure that the supplier or manufacturer of the plant or  
21 system is told about the hazard or defect; and

22 (iii) if the person is not the owner of the plant or system—  
23 ensure that the owner of the plant or system is told about  
24 the hazard or defect and its significance; and

25 (d) if the plant or system, or a part of the plant or system, is to be  
26 disposed of—take all reasonable steps to ensure that the plant  
27 or system (or part) is, before its disposal, thoroughly cleaned so  
28 that it is free from the dangerous substance or is otherwise  
29 made safe; and

- 1 (e) if the plant or system, or a part of the plant or system, is no  
2 longer to be used to handle the dangerous substance—take all  
3 reasonable steps to ensure that the plant or system (or part) is  
4 thoroughly cleaned so that it is free from the substance or is  
5 otherwise made safe.

6 **35 Safety duties of people in control of design, manufacture,  
7 import and supply of plant and systems**

- 8 (1) A person in control of the design, manufacture, import or supply of  
9 plant or a system for handling a dangerous substance must—  
10 (a) take all reasonable steps to ensure that the plant or a system is  
11 safe to handle the substance; and  
12 (b) if the person is a person in control of the supply of the plant or  
13 system—take all reasonable steps to ensure that appropriate  
14 information about the safe installation, operation, maintenance  
15 and repair of the plant or system is given to—  
16 (i) a person in control of the plant or system; and  
17 (ii) if the person mentioned in subparagraph (i) is not the  
18 owner—the owner of the plant or system; and  
19 (c) if the person (the *appropriate person*) becomes aware of a  
20 hazard or defect in relation to the plant or system—ensure that  
21 the designated person is told—  
22 (i) about the hazard or defect and its significance; and  
23 (ii) how the plant or system may be operated, modified,  
24 maintained or repaired to eliminate the hazard, correct the  
25 defect or minimise the risks resulting from the hazard or  
26 defect.

27 *Note* A failure to comply with this section may be an offence (see pt 3.2).

- 1 (2) In this section:  
2 *designated person* means—  
3 (a) if the appropriate person is a person in control of the design or  
4 import of the plant or system—a person in control of the  
5 manufacture of the plant or system; or  
6 (b) if the appropriate person is a person in control of the  
7 manufacture of the plant or system—a person in control of the  
8 design or import (if any) of the plant or system; or  
9 (c) if the appropriate person is a person in control of the supply of  
10 the plant or system—  
11 (i) a person in control of the manufacture or import (if any)  
12 of the plant or system; and  
13 (ii) the person to whom the plant or system was supplied.

14 **36 Safety duties of people in control of installation of plant**  
15 **and systems**

- 16 A person in control of the installation of plant or a system to handle  
17 a dangerous substance must—  
18 (a) take all reasonable steps to ensure that the plant or system is  
19 safe to handle the substance; and  
20 (b) take all reasonable steps to ensure that appropriate information  
21 about the safe operation, maintenance and repair of the plant or  
22 system is given to—  
23 (i) a person in control of the plant or system; and  
24 (ii) if the person mentioned in subparagraph (i) is not the  
25 owner—the owner of the plant or system; and

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- 1 (c) if the person becomes aware of a hazard or defect in relation to  
2 the plant or system—ensure that a person in control of the  
3 plant or system is told—
- 4 (i) about the hazard or defect and its significance; and
- 5 (ii) how the plant or system may be operated, modified,  
6 maintained or repaired to eliminate the hazard, correct the  
7 defect or minimise the risks resulting from the hazard or  
8 defect.

9 *Note* A failure to comply with this section may be an offence (see pt 3.2).

10 **Division 3.1.5 Reporting of dangerous**  
11 **occurrences**

12 **37 Application of div 3.1.5**

- 13 (1) This division does not apply in relation to the non-commercial  
14 handling of a dangerous substance at premises.

15 *Note 1* *At* premises includes in or on the premises (see dict).

16 *Note 2* For the meaning of *non-commercial*, see s 12.

- 17 (2) If the premises are residential premises, this division does not apply  
18 to the part of the premises used for the non-commercial handling of  
19 the substance.

20 *Note* *Premises* includes any part of an area of land or a structure or vehicle  
21 (see dict).

22 **38 Meaning of *dangerous occurrence***

23 In this Act:

24 *dangerous occurrence* means any of the following at premises used  
25 to handle a dangerous substance:

- 26 (a) an incident causing or creating a substantial risk of—

- 1 (i) death or serious harm to a person, whether at the  
2 premises or elsewhere; or
- 3 (ii) substantial damage to property or the environment,  
4 whether at the premises or elsewhere;
- 5 (b) anything declared under the regulations to be a dangerous  
6 occurrence;
- 7 (c) any other incident involving a serious and immediate risk of  
8 anything mentioned in paragraph (a) or (b).

9 **Examples of incidents**

- 10 1 a spill or other loss of containment of a dangerous substance  
11 2 an uncontrolled emission of a dangerous substance  
12 3 a fire, explosion or release of energy

13 *Note* An example is part of the Act, is not exhaustive and may extend, but  
14 does not limit, the meaning of the provision in which it appears (see  
15 Legislation Act, s 126 and s 132).

16 **39 Person in control of premises—safety duty to report**  
17 **actual or likely dangerous occurrences**

- 18 (1) If a person in control of premises believes there is a substantial  
19 likelihood of a dangerous occurrence happening at the premises, the  
20 person must—
- 21 (a) if the occurrence is likely to cause death or serious harm to a  
22 person or substantial damage to property or the environment—  
23 tell the chief executive about the person's belief immediately  
24 after the person forms the belief; and
- 25 (b) in any other case—tell the chief executive about the person's  
26 belief as soon as possible after the person forms the belief or, if  
27 a period is prescribed under the regulations, within the  
28 prescribed period.

<b>Chapter 3</b>	Safety duties for dangerous substances
<b>Part 3.1</b>	Safety duties
<b>Division 3.1.6</b>	Miscellaneous

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- 1 (2) A person in control of premises where a dangerous occurrence has  
2 happened must tell the chief executive about the occurrence—
- 3 (a) if the occurrence causes death or serious harm to a person or  
4 substantial damage to property or the environment—  
5 immediately after the occurrence happens; and
- 6 (b) in any other case—as soon as possible after the occurrence  
7 happens or, if a period is prescribed under the regulations,  
8 within the prescribed period.

9 *Note* A failure to comply with this section may be an offence (see pt 3.2).

10 **Division 3.1.6 Miscellaneous**

11 **40 Safety duties do not limit each other**

12 To remove any doubt, a duty under a provision of this part does not  
13 limit the duties under another provision of this part.

14 *Note* A person may be subject to more than 1 duty under this Act (see s 20).

1 **Part 3.2** **Failure to comply with safety**  
2 **duties**

3 **41** **Meaning of *safety duty* for pt 3.2**

4 In this part:

5 *safety duty* means a duty under any of the following provisions:

- 6 • section 23 (General safety duty of everyone handling  
7 dangerous substances anywhere)
- 8 • section 25 (Safety management system required for certain  
9 people in control of handling dangerous substances)
- 10 • section 26 (Particular safety duties of manufacturers)
- 11 • section 27 (Particular safety duties of importers)
- 12 • section (2) (Particular safety duties of suppliers)
- 13 • section 30 (Safety duties of everyone at premises)
- 14 • section 31 (Safety duties of people in control of premises)
- 15 • section 33 (General safety duties for plant and systems)
- 16 • section 34 (Safety duties of people in control of plant and  
17 systems)
- 18 • section 35 (Safety duties of people in control of design,  
19 manufacture, import and supply of plant and systems)
- 20 • section 36 (Safety duties of people in control of installation of  
21 plant and systems)
- 22 • section 39 (Person in control of premises—safety duty to  
23 report actual or likely dangerous occurrences).

1 **42 Failure to comply with safety duty—general offence**

2 (1) A person commits an offence if—

3 (a) the person is required to comply with a safety duty; and

4 (b) the person fails to comply with the safety duty.

5 Maximum penalty: 100 penalty units.

6 (2) Absolute liability applies to subsection (1) (a).

7 (3) Strict liability applies to subsection (1) (b).

8 **43 Failure to comply with safety duty—exposing people to**  
9 **substantial risk of death or serious harm**

10 (1) A person commits an offence if—

11 (a) the person is required to comply with a safety duty; and

12 (b) the person fails to comply with the safety duty; and

13 (c) the failure exposes anyone to a substantial risk of death or  
14 serious harm; and

15 (d) the person either—

16 (i) was reckless about whether the failure would expose  
17 anyone to death or serious harm; or

18 (ii) was negligent about whether the failure would expose  
19 anyone to death or serious harm.

20 Maximum penalty: 1 500 penalty units, imprisonment for 5 years or  
21 both.

22 (2) Absolute liability applies to subsection (1) (a).



1 **44 Failure to comply with safety duty—causing death or**  
2 **serious harm to people**

- 3 (1) A person commits an offence if—
- 4 (a) the person is required to comply with a safety duty; and
  - 5 (b) the person fails to comply with the safety duty; and
  - 6 (c) the failure causes the death of or serious harm to anyone; and
  - 7 (d) the person either—
    - 8 (i) was reckless about whether the failure would cause the
    - 9 death of or serious harm to anyone; or
    - 10 (ii) was negligent about whether the failure would cause the
    - 11 death of or serious harm to anyone.

12 Maximum penalty: 2 000 penalty units, imprisonment for 7 years or  
13 both.

- 14 (2) Absolute liability applies to subsection (1) (a).

15 **45 Failure to comply with safety duty—exposing property or**  
16 **environment to substantial risk of substantial damage**

- 17 (1) A person commits an offence if—
- 18 (a) the person is required to comply with a safety duty; and
  - 19 (b) the person fails to comply with the safety duty; and
  - 20 (c) the failure exposes property or the environment to a substantial
  - 21 risk of substantial damage; and
  - 22 (d) the person either—
    - 23 (i) was reckless about whether the failure would expose
    - 24 property or the environment to a substantial risk of
    - 25 substantial damage; or

1                   (ii) was negligent about whether the failure would expose  
2                   property or the environment to a substantial risk of  
3                   substantial damage.

4                   Maximum penalty: 1 000 penalty units, imprisonment for 3 years or  
5                   both.

6                   (2) Absolute liability applies to subsection (1) (a).

7                   **46 Failure to comply with safety duty—causing substantial**  
8                   **damage to property or environment**

9                   (1) A person commits an offence if—

10                   (a) the person is required to comply with a safety duty; and

11                   (b) the person fails to comply with the safety duty; and

12                   (c) the failure causes substantial damage to property or the  
13                   environment; and

14                   (d) the person either—

15                   (i) was reckless about whether the failure would cause  
16                   substantial damage to property or the environment; or

17                   (ii) was negligent about whether the failure would cause  
18                   substantial damage to property or the environment.

19                   Maximum penalty: 1 500 penalty units, imprisonment for 5 years or  
20                   both.

21                   (2) Absolute liability applies to subsection (1) (a).

1 **47 Alternative verdicts for failure to comply with safety**  
2 **duties**

3 (1) This section applies if, in a prosecution for an offence for a failure  
4 to comply with a safety duty, the trier of fact—

5 (a) is not satisfied beyond reasonable doubt that the defendant is  
6 guilty of the offence; but

7 (b) is satisfied beyond reasonable doubt that the defendant is guilty  
8 of an alternative offence.

9 (2) The trier of fact may find the defendant guilty of the alternative  
10 offence, but only if the defendant has been given procedural fairness  
11 in relation to the finding of guilt.

12 (3) In this section:

13 *alternative offence*, for an offence mentioned in the table of  
14 alternative verdicts, column 2, means an offence mentioned in the  
15 table, column 3 for the offence.

16 **Table of alternative verdicts**

<b>column 1 item</b>	<b>column 2 prosecuted offence</b>	<b>column 3 alternative offence</b>
1	section 42 (which is about failing to comply with a safety duty)	section 63 (Failure to comply with conditions of licence)
2	section 43 (which is about exposing a person to substantial risk of death or serious harm)	section 42 section 63
3	section 44 (which is about causing death or serious harm to a person)	section 42 section 43 section 63

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**Part 3.2** Failure to comply with safety duties

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<b>column 1 item</b>	<b>column 2 prosecuted offence</b>	<b>column 3 alternative offence</b>
4	section 45 (which is about exposing property or the environment to substantial risk of substantial damage)	section 42 section 63
5	section 46 (which is about causing substantial damage to property or the environment)	section 42 section 45 section 63

1 **Chapter 4**                    **Licences for dangerous**  
2    **substances**

3 **Part 4.1**                            **General—licences**

4            *Note 1*    The regulations prescribe when a person is required to hold a licence (or  
5    some other form of authority) to handle a dangerous substance (see  
6    s 214 (for explosives), s 215 (1) (a) and s 217).

7            *Note 2*    If a person handles a dangerous substance without a licence it may be an  
8    offence under ch 5.

9 **48**    **Meaning of *close associate* for ch 4**

10        (1) In this chapter:

11            *close associate*—a person is a close associate of someone (the  
12    *related person*) if—

13            (a) the person holds or will hold an executive position (however  
14    described) in the related person's business; or

15            (b) the chief executive is satisfied that the person is or will be able  
16    to exercise a significant influence in relation to the conduct of  
17    the related person's business because the person holds or will  
18    hold a financial interest, or is entitled to exercise a relevant  
19    power, in the business.

20            *Note*        For the meaning of *business*, see the dictionary.

21        (2) In this section:

22            *executive position*—a position (however described) in the related  
23    person's business is an *executive position* if the holder of the  
24    position is concerned with, or takes part in, the management of the  
25    business.

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1           *exercise* a power includes exercise the power on behalf of someone  
2           else.

3           *financial interest*, in a business, means—

4           (a) a share in the capital of the business; or

5           (b) an entitlement to receive income derived from the business,  
6           however the entitlement arises.

7           *hold* a position includes hold the position on behalf of someone else.

8           *power* means a power exercisable—

9           (a) by voting or otherwise; and

10          (b) alone or with others.

11          *relevant power*, in a business, means a power—

12          (a) to take part in a directorial, managerial or executive decision  
13          for the business; or

14          (b) to elect or appoint a person to an executive office in the  
15          business.

16   **49 Working out whether person is a *suitable person***

17    (1) The chief executive must have regard to the following matters in  
18    deciding whether a person is a *suitable person* to be issued with, or  
19    continue to hold, a licence:

20    (a) the knowledge, experience and training of the person in  
21    relation to the kinds of dangerous substances;

22    (b) whether the person or a close associate of the person, or a  
23    corporation of which the person was at the relevant time an  
24    executive officer, has supplied information or a document that  
25    is false or misleading in a material particular in relation to this  
26    Act;

- 1 (c) whether the person or a close associate of the person, or a  
2 corporation of which the person was an executive officer, is  
3 disqualified under the Act or a corresponding law from holding  
4 a licence;
- 5 (d) whether the person or a close associate of the person, or a  
6 corporation of which the person was at the relevant time an  
7 executive officer—
- 8 (i) has contravened this Act or a corresponding law, whether  
9 or not the person, associate or corporation has been  
10 convicted or found guilty of an offence for the  
11 contravention; or
- 12 (ii) has failed to comply with a condition of a licence under  
13 this Act or a licence or other authority (however  
14 described) under a corresponding law, whether or not the  
15 person, associate or corporation has been convicted or  
16 found guilty of an offence for the failure;
- 17 (e) any action being taken against the person or a close associate  
18 of the person under part 4.4 (Disciplinary action);
- 19 (f) whether the person or a close associate of the person, or a  
20 corporation of which the person was at the relevant time an  
21 executive officer, has been convicted or found guilty in the  
22 ACT or elsewhere, within the 5-year period before the  
23 application, of an offence involving a dangerous substance;
- 24 (g) whether the person or a close associate of the person has been  
25 convicted or found guilty in the ACT or elsewhere, within the  
26 5-year period before the day the application is made, of an  
27 offence involving—
- 28 (i) a firearm; or
- 29 (ii) actual or threatened violence; or
- 30 (iii) fraud or dishonesty;

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- 1 (h) whether the person or a close associate of the person has,  
2 within the 5-year period before the day the application is made,  
3 been subject to a protection order or corresponding protection  
4 order (other than an order that has been revoked or for which  
5 an appeal against the making of the order has been upheld);  
6 (i) anything prescribed under the regulations.

7 *Note 1* For the meaning of *found guilty*, see Legislation Act, dict, pt 1.

8 *Note 2* A reference to an Act includes a reference to statutory instruments made  
9 or in force under the Act, including regulations and any law or  
10 instrument applied, adopted or incorporated by the Act (see Legislation  
11 Act, s 104).

12 (2) In this section:

13 *corresponding protection order* means an order (however  
14 described) under a law of the Commonwealth, a State, another  
15 Territory or New Zealand that has the same effect or substantially  
16 the same effect as a protection order.

17 *protection order*—see the *Protection Orders Act 2001*, dictionary,  
18 definition of *final order*.

19 **50 Applications for licences etc to comply with Act**

20 (1) This section applies to—

- 21 (a) an application for a licence; or  
22 (b) an application by a licensee to amend the licence; or  
23 (c) any other application prescribed under the regulations in  
24 relation to a licence.

25 (2) The application must include any information or documents  
26 (including information or documents verified in a particular way)  
27 required under the regulations or by a form approved under  
28 section 222 for the application.



- 1 (3) The chief executive need not decide the application if it does not  
2 include the required information and documents.

3 **51 Power to ask for information from applicants, licensees**  
4 **and others**

- 5 (1) In this section:

6 *designated matter* means—

- 7 (a) an application for a licence; or  
8 (b) an application by a licensee to amend the licence; or  
9 (c) a change of the kind to which section 57 (2) (Licensee to keep  
10 chief executive informed) applies; or  
11 (d) anything else prescribed under the regulations.

12 *third party*, for an applicant for a licence or a licensee—a person is  
13 a *third party* if the chief executive believes on reasonable grounds  
14 that the person has an association or connection with the applicant  
15 or licensee that is relevant to the consideration of a designated  
16 matter.

- 17 (2) The chief executive may, by written notice given to an applicant for  
18 a licence or a licensee, ask the person to do 1 or more of the  
19 following:

- 20 (a) give, in accordance with any directions in the notice, stated  
21 information (including information in the possession of or  
22 under the control of a third party), verified as stated in the  
23 notice, that is relevant to the consideration of the designated  
24 matter in relation to the person;  
25 (b) produce, in accordance with any directions in the notice, stated  
26 documents (including documents in the possession of or under  
27 the control of a third party) relevant to the consideration of the  
28 designated matter in relation to the person and allow

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- 1 examination of the documents, the taking of extracts from them  
2 and the making of copies of them;
- 3 (c) authorise a third party stated in the notice to comply with a  
4 stated request of a kind mentioned in paragraph (a) or (b);
- 5 (d) give the chief executive the authorities and consents the chief  
6 executive asks for to allow the chief executive to obtain  
7 information (including financial and other confidential  
8 information) from other people about the person or a close  
9 associate of the person.
- 10 **Examples for par (a)**
- 11 1 the notice may ask the person to give information by preparing a document  
12 in a stated way or by completing a document provided by the chief executive
- 13 2 the notice may ask the person to give the chief executive information about a  
14 close associate and that the information be verified by a statutory declaration
- 15 **Example for par (b)**
- 16 a statement supplied by a police officer about the applicant's criminal history (if  
17 any)
- 18 **Example for par (c)**
- 19 The notice may ask the applicant to authorise the applicant's accountant, or a  
20 former close associate, to give the chief executive stated information or  
21 documents about the applicant.
- 22 *Note 1* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of  
23 statutory declarations under ACT laws.
- 24 *Note 2* An example is part of the Act, is not exhaustive and may extend, but  
25 does not limit, the meaning of the provision in which it appears (see  
26 Legislation Act, s 126 and s 132).
- 27 (3) If the chief executive asks for something under this section in  
28 relation to an application, the chief executive need not decide the  
29 application until the request is complied with.

1 **Part 4.2** **Issue amendment,**  
2 **replacement and surrender of**  
3 **licences**

4 **52 Licence application and decision**

- 5 (1) A person may apply to the chief executive for a licence.

6 *Note 1* A fee may be determined under s 221 for this section.

7 *Note 2* If a form is approved under s 222 for an application, the form must be  
8 used.

- 9 (2) The chief executive must issue the licence to the person if satisfied  
10 that—

11 (a) the person is a suitable person to hold the licence; and

12 (b) the person can comply with this Act in relation to the activities  
13 to be authorised by the licence.

- 14 (3) The chief executive must refuse to issue the licence if the chief  
15 executive is not satisfied about the matters mentioned in  
16 subsection (2).

17 *Note* Section 50 (3) and s 51 (3) contain exceptions to this section.

18 **53 Licence conditions**

- 19 (1) The chief executive may include conditions in a licence to protect  
20 the health and safety of people, and property and the environment  
21 from damage, from hazards associated with, or risks resulting from,  
22 the dangerous substances to which the licence applies.

- 1 (2) A licence is subject to—  
2 (a) any conditions included in the licence by the chief executive;  
3 and  
4 (b) any conditions prescribed under the regulations.

5 **54 Term of licence**

- 6 (1) A licence is issued for the period stated in the licence.  
7 (2) A licence may not be issued for longer than 3 years, or any shorter  
8 period prescribed under the regulations.

9 **55 Licence not transferable**

10 A licence is not transferable.

11 **56 Form of licence**

- 12 (1) A licence must show the following information:  
13 (a) the full name of the licensee;  
14 (b) if appropriate—  
15 (i) details of the premises where the licensee is authorised to  
16 carry out activities under the licence; and  
17 (ii) the address of the premises or, if the premises are a  
18 vehicle, any information prescribed under the regulations  
19 for the vehicle;  
20 (c) the dangerous substances to which the licence relates;  
21 (d) the kinds of handling of dangerous substances authorised under  
22 the licence (each of which is a *handling authority*);

- 1 (e) any conditions included in the licence by the chief executive;  
2 (f) any exemption given by the Minister or chief executive under  
3 this Act that is relevant to the licence;  
4 (g) a unique identifying number;  
5 (h) when the term of the licence ends.

6 **Example for par (d)**

7 A licence may authorise a person to manufacture a dangerous substance and to  
8 import other dangerous substances (the other dangerous substances are necessary  
9 to manufacture the dangerous substance). The licence also authorises the person  
10 to store the imported and manufactured dangerous substances and to supply the  
11 manufactured dangerous substance.

12 *Note* An example is part of the Act, is not exhaustive and may extend, but  
13 does not limit, the meaning of the provision in which it appears (see  
14 Legislation Act, s 126 and s 132).

- 15 (2) A licence may also include any other information the chief  
16 executive considers appropriate.

17 **57 Licensee to keep chief executive informed**

- 18 (1) This section applies if a person believes that there will be a change  
19 to anything stated in—

- 20 (a) a licence held by the person; or  
21 (b) the application for the licence made by the person; or  
22 (c) an application to amend the licence made by the person.

23 *Note* If a person fails to comply with this section the chief executive may take  
24 disciplinary action under pt 4.4 (see s 67).

- 1 (2) The person must—  
2 (a) give the chief executive written notice of the change no later  
3 than 7 days before the day the change happens; and  
4 (b) if the change affects a particular shown on the licence—return  
5 the licence to the chief executive with the notice.

6 **Examples of changes**

- 7 1 a change in a licensee's close associates  
8 2 a structural change in premises relevant to handling a dangerous substance

9 *Note* An example is part of the Act, is not exhaustive and may extend, but  
10 does not limit, the meaning of the provision in which it appears (see  
11 Legislation Act, s 126 and s 132).

- 12 (3) If the change affects a particular shown on a licence, the chief  
13 executive must amend the licence or issue another licence for the  
14 remainder of the period of the licence it replaces.  
15 (4) However, subsection (3) does not apply if the chief executive is  
16 taking, or considering whether to take, action under part 4.4  
17 (Disciplinary action) in relation to the licensee because of the  
18 change.

19 **58 Licence—application to amend by licensee**

- 20 (1) A licensee may apply to the chief executive to amend the licence.

21 **Examples of amendments**

- 22 1 to amend or revoke a condition included in the licence by the chief executive  
23 2 to change the premises where activities may be carried out under the licence

24 *Note 1* A fee may be determined under s 221 for this section.

25 *Note 2* If a form is approved under s 222 for an application, the form must be  
26 used.

27 *Note 3* An example is part of the Act, is not exhaustive and may extend, but  
28 does not limit, the meaning of the provision in which it appears (see  
29 Legislation Act, s 126 and s 132).

- 1 (2) The chief executive must amend the licence if, assuming that the  
2 application to amend were an application under section 52 (Licence  
3 application and decision) for a licence that included the proposed  
4 amendment, the chief executive would be required to issue a  
5 licence.

6 *Note 1* For the return of the licence to the chief executive, see s 64.

7 *Note 2* Pt 4.1 applies to the consideration of the application.

- 8 (3) If subsection (2) does not apply, the chief executive must refuse the  
9 application to amend the licence.

10 **59 Licence—imposition etc of conditions on chief**  
11 **executive's initiative**

- 12 (1) This section applies to a licensee if the chief executive proposes, on  
13 the chief executive's own initiative, to amend the licence to impose  
14 a condition, or to amend or revoke a condition included in the  
15 licence by the chief executive, (the *proposed action*).

- 16 (2) The chief executive must give the licensee a written notice stating—

- 17 (a) the proposed action; and  
18 (b) if the proposed action is to impose a condition—the proposed  
19 condition; and  
20 (c) if the proposed action is to amend a condition—the condition  
21 as proposed to be amended; and  
22 (d) an explanation for the proposed action; and  
23 (e) that the licensee may, within 14 days after the day the licensee  
24 receives the notice, give a written response to the chief  
25 executive about the notice.

- 26 (3) In deciding whether to take the proposed action, the chief executive  
27 must consider any response given to the chief executive in  
28 accordance with the notice.

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- 1 (4) The chief executive must give the licensee written notice of the  
2 chief executive's decision.
- 3 (5) If the chief executive decides to take the proposed action, the chief  
4 executive's decision takes effect 14 days after the day when notice  
5 of the decision is given to the licensee or, if the notice states a later  
6 date of effect, that date.
- 7 (6) If the licence is amended, the chief executive must, as soon as  
8 practicable after the licence has been returned to the chief executive,  
9 amend the licence or give the licensee a replacement licence  
10 showing the amendment.
- 11 *Note* The licensee must return the licence to the chief executive for  
12 amendment (see s 64).
- 13 (7) This section does not affect the taking of action under part 4.4  
14 (Disciplinary action).

15 **60 Replacement of licence**

- 16 (1) The chief executive may issue a replacement licence to a licensee if  
17 satisfied that the licence has been lost, stolen or destroyed.
- 18 (2) For subsection (1), the chief executive may require the licensee to  
19 give the chief executive a statement, verified by a statutory  
20 declaration signed by the licensee, that the licence has been lost,  
21 stolen or destroyed.
- 22 *Note 1* A fee may be determined under s 221 for this section.
- 23 *Note 2* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of  
24 statutory declarations under ACT laws.
- 25 (3) A licence issued under this section must be issued for the remainder  
26 of the period of the licence it replaces.



1 **61 Surrender of licence**

- 2 (1) A licensee may apply to the chief executive to surrender the  
3 licensee's licence.
- 4 (2) The licensee must, with the application—
- 5 (a) return the licence to the chief executive; or
- 6 (b) if the licence has been lost, stolen or destroyed—give the chief  
7 executive a statement, verified by a statutory declaration  
8 signed by the licensee, that the licence has been lost, stolen or  
9 destroyed.

10 *Note* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of  
11 statutory declarations under ACT laws.

12 **62 Chief executive may ask for information etc from licensee**

- 13 (1) This section applies if a change mentioned in section 57 (1)  
14 (Licensee to keep chief executive informed) happens in relation to a  
15 licence, whether or not the licensee gives notice of the change to the  
16 chief executive under section 57.
- 17 (2) To decide whether, because of the change, the licensee has ceased to  
18 be a suitable person to hold the licence or has failed, or is failing, to  
19 comply with this Act, the chief executive may give the licensee a  
20 notice under section 51 (Power to request information from  
21 applicants, licensees and others).
- 22 (3) The licensee must comply with a notice given to the licensee under  
23 section 51.

1 **Part 4.3** **Offences relating to licences**

2 **63 Failure to comply with conditions of licence**

3 (1) A licensee commits an offence if—

4 (a) the licensee's licence is subject to a condition; and

5 (b) the licensee fails to comply with a requirement of the  
6 condition.

7 Maximum penalty: 100 penalty units.

8 (2) An offence against this section is a strict liability offence.

9 **64 Return of amended, suspended or cancelled licences**

10 (1) A licensee commits an offence if—

11 (a) the licensee's licence is—

12 (i) amended under section 58 (Licence—application for  
13 amendment by licensee); or

14 (ii) amended under section 59 (Licence—imposition etc of  
15 conditions on chief executive's initiative); or

16 (iii) amended, suspended or cancelled under part 4.4  
17 (Disciplinary action); and

18 (b) the licensee fails to return the licence to the chief executive as  
19 soon as practicable (but within 7 days) after the day the  
20 licensee is told about the chief executive's action.

21 Maximum penalty: 100 penalty units.

22 (2) An offence against this section is a strict liability offence.

1 **65 Pretending to hold licence**

2 (1) A person commits an offence if the person pretends to be the holder  
3 of a licence.

4 Maximum penalty: 100 penalty units.

5 (2) A person commits an offence if the person pretends to be authorised  
6 to do something under a licence.

7 Maximum penalty: 100 penalty units.

8 **66 Offence to allow someone else to use licence**

9 A licensee commits an offence if the licensee lets someone else use  
10 the licensee's licence.

11 Maximum penalty: 100 penalty units.

## 1      **Part 4.4                      Disciplinary action**

### 2      **67      Grounds for disciplinary action**

3              The chief executive may take disciplinary action against—

4              (a) a licensee, if the chief executive believes, on reasonable  
5                          grounds, that the licensee—

6                          (i) is not, or is no longer, a suitable person to hold a licence;  
7    or

8                          (ii) has contravened, or is contravening, this Act; or

9              *Note 1*      For the meaning of *suitable person*, see s 49.

10             *Note 2*      For the meaning of *disciplinary action*, see s 68 (3) and (4).

11             (b) a former licensee, if the chief executive believes, on reasonable  
12                          grounds, that the former licensee contravened this Act while  
13                          holding a licence, whether or not the former licensee has been  
14                          convicted or found guilty of an offence for the contravention.

### 15     **68      Taking disciplinary action**

16             (1) If the chief executive proposes to take disciplinary action in relation  
17                          to a licensee, or a former licensee, the chief executive must give the  
18                          person a written notice (a *disciplinary notice*) that—

19                          (a) states the proposed action (including any proposed  
20    disqualification period, suspension period or amendment of a  
21    licence); and

22                          (b) states the grounds for the proposed action; and

23                          (c) tells the person that the person may, within 14 days after the  
24    day the person receives the notice, give a written response to  
25    the chief executive about the notice.

- 1 (2) In deciding whether to take disciplinary action, the chief executive  
2 must consider any response given to the chief executive in  
3 accordance with the notice under subsection (1) (c).
- 4 (3) If the chief executive is satisfied that a ground for taking action  
5 under this section has been established in relation to a licensee, the  
6 chief executive may do 1 or more of the following (each of which is  
7 ***disciplinary action***):
- 8 (a) reprimand the licensee;
- 9 (b) require the licensee to complete a stated course of training to  
10 the satisfaction of the chief executive or another stated person;
- 11 (c) amend the licence, including by imposing a condition on the  
12 licence or amending an existing condition;
- 13 (d) suspend the licence, or a particular handling authority under  
14 the licence, for a stated period or until a stated event happens;
- 15 (e) cancel the licence, or a particular handling authority under the  
16 licence;
- 17 (f) cancel the licence and disqualify the licensee from applying for  
18 a licence, or a particular kind of licence for a stated period or  
19 until a stated event happens.
- 20 (4) If the chief executive is satisfied that a ground for taking action  
21 under this section has been established in relation to a former  
22 licensee, the chief executive may do 1 or more of the following  
23 (each of which is ***disciplinary action***):
- 24 (a) reprimand the former licensee;
- 25 (b) disqualify the former licensee from applying for a licence, or a  
26 particular kind of licence—
- 27 (i) for a stated period; or

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- 1 (ii) until the former licensee completes a stated course of  
2 training to the satisfaction of the chief executive or  
3 someone else; or
- 4 (iii) until a stated event happens.
- 5 (5) The chief executive must give the person written notice of the chief  
6 executive's decision.
- 7 (6) A decision to take action under subsection (3) or (4) takes effect  
8 14 days after the day when notice of the decision is given to the  
9 person or, if the notice states a later date of effect, that date.
- 10 *Note* For the requirement to return of an amended, suspended or cancelled  
11 licence to the chief executive, see s 64.

12 **69 Immediate suspension of licence**

- 13 (1) This section applies if the chief executive has given, or is  
14 considering whether to give, a disciplinary notice to a licensee.
- 15 (2) The chief executive may give the licensee a written notice (an  
16 *immediate suspension notice*) suspending the licence or a particular  
17 handling authority under the licence.
- 18 *Note* For the meaning of *handling authority*, see s 56 (1) (d).
- 19 (3) However, the chief executive may suspend the licence or handling  
20 authority under subsection (2) only if—
- 21 (a) the chief executive has taken into account the circumstances  
22 leading to the decision to give or consider giving the  
23 disciplinary notice and the grounds stated, or that may be  
24 stated, in the disciplinary notice; and
- 25 (b) the chief executive believes, on reasonable grounds, that it is in  
26 the public interest that the licence or handling authority be  
27 suspended as soon as practicable before a decision is made  
28 whether or not to take action against the licensee under  
29 section 68.

- 1 (4) If an immediate suspension notice is given to the licensee, the  
2 licensee's licence, or the handling authority, is suspended when the  
3 notice is given to the licensee.

4 *Note* For the return of the licence to the chief executive, see s 64.

- 5 (5) If the licensee is given an immediate suspension notice because the  
6 chief executive is considering whether to give a disciplinary notice  
7 to the licensee, the chief executive must, as soon as practicable, give  
8 a disciplinary notice to the licensee or tell the licensee in writing  
9 that a disciplinary notice will not be given to the licensee.

- 10 (6) An immediate suspension notice ends—

11 (a) if the licence is cancelled or suspended under section 68 (3)—  
12 when the cancellation or suspension takes effect; or

13 (b) if a condition is imposed on the licence to which the notice  
14 relates, or a condition of the licence is amended—when the  
15 condition or amended condition takes effect; or

16 (c) in any other case—when the person is given written notice  
17 under section 68 (5) of the decision made on the disciplinary  
18 notice or the chief executive tells the licensee that a  
19 disciplinary notice will not be given to the licensee.

## 20 **70 Effect of suspension of licence**

- 21 (1) A suspended licence or handling authority does not authorise the  
22 licensee to carry on an activity authorised by the licence or handling  
23 authority during the suspension.

- 24 (2) If the chief executive suspends a licence or handling authority, the  
25 licensee is, during the suspension—

26 (a) taken not to hold the licence or handling authority; and

27 (b) disqualified from applying for a licence or handling authority  
28 of that kind.

- 1 (3) If the chief executive suspends a handling authority under a licence,  
2 the licence is taken to be amended under this part to give effect to  
3 the suspension.

4 **71 Action by chief executive in relation to amended,  
5 suspended or cancelled licence**

- 6 (1) If a licence is amended under this part, the chief executive must, as  
7 soon as practicable after the licence has been returned to the chief  
8 executive, amend the licence or give the licensee a replacement  
9 licence showing the amendment.

10 *Note* For the requirement to return an amended or suspended licence to the  
11 chief executive, see s 64.

- 12 (2) If a licence is suspended under this part and the suspension ends  
13 before the end of the term of the licence, the chief executive must  
14 return the licence to the licensee.

- 15 (3) If a handling authority under a licence is suspended under this part  
16 and the suspension ends before the end of the term of the licence,  
17 the chief executive must, as soon as practicable after the licence has  
18 been returned to the chief executive, amend the licence or give the  
19 licensee a replacement licence that includes the handling authority.

20 **72 Publication of disciplinary decision by chief executive**

- 21 (1) If the chief executive takes disciplinary action against a licensee or  
22 former licensee, the chief executive may publish the following  
23 information in a way that the chief executive considers appropriate:

- 24 (a) particulars that allow the public to identify the licensee or  
25 former licensee;  
26 (b) details of the disciplinary action;  
27 (c) an outline of why the disciplinary action was taken;



- 1 (d) any other information in relation to the disciplinary action and  
2 the safety of the dangerous substance concerned that the chief  
3 executive considers appropriate.

4 **Examples of publication**

- 5 1 a press release  
6 2 an article in a document published by the Territory or a Territory authority  
7 3 an advertisement in a newspaper circulating in the ACT

8 **Examples for par (a)**

- 9 1 the licensee's name and ACN (if any)  
10 2 any name (and, if relevant, ACN) used in the past by the licensee  
11 3 the licensee's current and previous business addresses

12 *Note* An example is part of the regulations, is not exhaustive and may extend,  
13 but does not limit, the meaning of the provision in which it appears (see  
14 Legislation Act, s 126 and s 132).

15 (2) However, the information may be published only if—

16 (a) the time for any review or appeal in relation to the disciplinary  
17 action has ended and no application for review or appeal has  
18 been made; or

19 (b) an application for review or appeal has been made and—

20 (i) the application is withdrawn, struck out or discontinued  
21 or lapses; or

22 (ii) the disciplinary action is confirmed on review and the  
23 time for appeal has ended without an application for an  
24 appeal being made.

25 (3) If the disciplinary action is set aside on review or appeal, the  
26 information must not be published.

27 (4) If the disciplinary action is changed on review or appeal (for  
28 example, different disciplinary action is substituted), this section  
29 applies in relation to the action as changed.

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- 1 (5) For the *Civil Law (Wrongs) Act 2002*, section 128 (Publication of a  
2 proceeding of public concern)—
- 3 (a) the disciplinary action is taken to be a proceeding of public  
4 concern; and
- 5 (b) the information published by the chief executive under this  
6 section about the disciplinary action is taken to be a fair report  
7 of a proceeding of public concern.

1     **Chapter 5            Other serious offences**

2     **Part 5.1            Prohibited and controlled**  
3                         **dangerous substances**

4     **73     Definitions for ch 5**

5         In this Act:

6         *controlled dangerous substance* means an explosive or other  
7         dangerous substance declared under the regulations to be a  
8         controlled dangerous substance.

9         *explosive* means a dangerous substance declared under the  
10         regulations to be an explosive.

11         *prohibited dangerous substance* means—

12             (a) an explosive declared under the regulations to be a prohibited  
13             explosive; or

14             (b) any other dangerous substance declared under the regulations  
15             to be a prohibited dangerous substance.

16     **74     Unauthorised manufacture of certain dangerous**  
17             **substances**

18         (1) A person commits an offence if—

19             (a) the person manufactures a prohibited dangerous substance; and

20             (b) the person is not authorised under a licence, or under the  
21             regulations, to manufacture the substance.

22         Maximum penalty: 2 000 penalty units, imprisonment for 7 years or  
23         both.

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- 1 (2) A person commits an offence if—  
2 (a) the person manufactures a controlled dangerous substance; and  
3 (b) the person is not authorised under a licence, or under the  
4 regulations, to manufacture the substance.  
5 Maximum penalty: 1 000 penalty units, imprisonment for 4 years or  
6 both.

7 **75 Unauthorised import of certain dangerous substances**

- 8 (1) A person commits an offence if—  
9 (a) the person imports a prohibited dangerous substance; and  
10 (b) the person is not authorised under a licence, or under the  
11 regulations, to import the substance.  
12 Maximum penalty: 2 000 penalty units, imprisonment for 7 years or  
13 both.

14 *Note* **Import** means import into the ACT (see dict).

- 15 (2) A person commits an offence if—  
16 (a) the person imports a controlled dangerous substance; and  
17 (b) the person is not authorised under a licence, or under the  
18 regulations, to import the substance.  
19 Maximum penalty: 1 000 penalty units, imprisonment for 4 years or  
20 both.

1 **76 Unauthorised supply of certain dangerous substances**

2 (1) A person commits an offence if—

3 (a) the person supplies a prohibited dangerous substance to  
4 someone else (the *recipient*); and

5 (b) the person is not authorised under a licence, or under the  
6 regulations, to supply the substance to the recipient.

7 Maximum penalty: 2 000 penalty units, imprisonment for 7 years or  
8 both.

9 (2) A person commits an offence if—

10 (a) the person supplies a controlled dangerous substance to  
11 someone else (the *recipient*); and

12 (b) the person is not authorised under a licence, or under the  
13 regulations, to supply the substance to the recipient.

14 Maximum penalty: 1 000 penalty units, imprisonment for 4 years or  
15 both.

16 (3) A person commits an offence if—

17 (a) the person supplies a prohibited dangerous substance to  
18 someone else (the *recipient*); and

19 (b) the recipient is not authorised under a licence, or under the  
20 regulations, to receive the substance; and

21 (c) the person is reckless about whether the recipient is authorised  
22 under the licence or the regulations to receive the substance.

23 Maximum penalty: 2 000 penalty units, imprisonment for 7 years or  
24 both.

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- 1 (4) A person commits an offence if—  
2 (a) the person supplies a controlled dangerous substance to  
3 someone else (the *recipient*); and  
4 (b) the recipient is not authorised under a licence, or under the  
5 regulations, to receive the substance; and  
6 (c) the person is reckless about whether the recipient is authorised  
7 under the licence or the regulations to receive the substance.  
8 Maximum penalty: 1 000 penalty units, imprisonment for 4 years or  
9 both.

10 **77 Unauthorised possession of certain dangerous**  
11 **substances**

- 12 (1) A person commits an offence if—  
13 (a) the person possesses a prohibited dangerous substance; and  
14 (b) the person is not authorised under a licence, or under the  
15 regulations, to possess the substance.  
16 Maximum penalty: 2 000 penalty units, imprisonment for 7 years or  
17 both.  
18 (2) A person commits an offence if—  
19 (a) the person possesses a controlled dangerous substance; and  
20 (b) the person is not authorised under a licence, or under the  
21 regulations, to possess the substance.  
22 Maximum penalty: 500 penalty units, imprisonment for 2 years or  
23 both.

1 (3) In this section:

2 *possession*, of a dangerous substance by a person, includes—

3 (a) the person receiving or obtaining possession of the substance;  
4 and

5 (b) the person having control over the substance; and

6 (c) the person having joint possession of the substance with  
7 someone else.

8 **78 Unauthorised storage of certain dangerous substances**

9 (1) A person commits an offence if—

10 (a) the regulations require a dangerous substance to be stored in a  
11 particular way; and

12 (b) the person stores the substance; and

13 (c) the person fails to store the substance in accordance with the  
14 regulations.

15 Maximum penalty: 100 penalty units.

16 (2) An offence against this section is a strict liability offence.

17 **79 Unauthorised use of certain dangerous substances**

18 (1) A person commits an offence if—

19 (a) the person uses a prohibited dangerous substance; and

20 (b) the person is not authorised under a licence, or under the  
21 regulations, to use the substance.

22 Maximum penalty: 2 500 penalty units, imprisonment for 10 years  
23 or both.

- 1 (2) A person commits an offence if—  
2 (a) the person uses a controlled dangerous substance; and  
3 (b) the person is not authorised under a licence, or under the  
4 regulations, to use the substance.  
5 Maximum penalty: 750 penalty units, imprisonment for 3 years or  
6 both.

7 **80 Unauthorised carrying of certain dangerous substances**

- 8 (1) A person commits an offence if—  
9 (a) the regulations require a dangerous substance to be carried in a  
10 particular way; and  
11 (b) the person carries the substance; and  
12 (c) the person fails to carry the substance in accordance with the  
13 regulations.  
14 Maximum penalty: 100 penalty units.  
15 (2) An offence against this section is a strict liability offence.

16 **81 Unauthorised disposal of dangerous substances, plant**  
17 **and systems**

- 18 (1) A person commits an offence if—  
19 (a) the regulations require a dangerous substance to be disposed of  
20 in a particular way; and  
21 (b) the person disposes of the substance; and  
22 (c) the person fails to dispose of the substance in accordance with  
23 the regulations.  
24 Maximum penalty: 100 penalty units.



- 1 (2) A person commits an offence if—  
2 (a) the regulations require plant or a system used for handling a  
3 dangerous substance to be disposed of in a particular way; and  
4 (b) the person disposes of the plant or system; and  
5 (c) the person fails to dispose of the plant or system in accordance  
6 with the regulations.

7 Maximum penalty: 100 penalty units.

- 8 (3) An offence against this section is a strict liability offence.

9 **82 Unauthorised handling of dangerous substances**  
10 **generally**

- 11 (1) A person commits an offence if—  
12 (a) the regulations require a handling of a dangerous substance to  
13 be authorised under a licence; and  
14 (b) the person handles the substance; and  
15 (c) the person is not authorised under a licence to handle the  
16 substance.

17 Maximum penalty: 100 penalty units.

18 *Note 1* **Handling** a dangerous substance includes importing, manufacturing,  
19 storing, supplying, possessing, receiving or using the substance  
20 (see s (4)).

21 *Note 2* See the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth)  
22 for the transport of dangerous substances (other than explosives,  
23 infectious substances and radioactive substances) that are classified as  
24 dangerous goods under that Act.

25 *Note 3* Territory laws have no effect to the extent that they are inconsistent  
26 with a Commonwealth law (see *Australian Capital Territory (Self-*  
27 *Government) Act 1988* (Cwlth), s 28).

- 28 (2) An offence against this section is a strict liability offence.

1 **83 Handling of certain dangerous substances to be notified**

2 (1) A person in control of the handling of a dangerous substance  
3 commits an offence if—

4 (a) the regulations require the handling of the substance to be  
5 notified to the chief executive; and

6 (b) the person fails to ensure that the chief executive is notified of  
7 the handling of the substance in accordance with the  
8 regulations.

9 Maximum penalty: 100 penalty units.

10 *Note* **Handling** a dangerous substance includes importing, manufacturing,  
11 storing, supplying, possessing, receiving or using the substance  
12 (see s (4)).

13 (2) An offence against this section is a strict liability offence.

14 **84 Certain premises, plant or systems to be registered etc**

15 (1) A person in control of premises where a dangerous substance is  
16 handled commits an offence if—

17 (a) the regulations require the premises to be registered or notified  
18 under the regulations; and

19 (b) the person fails to ensure that the premises are registered or  
20 notified in accordance with the regulations.

21 Maximum penalty: 100 penalty units.

22 (2) A person in control of plant or a system for handling a dangerous  
23 substance commits an offence if—

24 (a) the regulations require the plant or system to be registered or  
25 notified under the regulations; and

1 (b) the person fails to ensure that the plant or system is registered  
2 or notified in accordance with the regulations.

3 Maximum penalty: 100 penalty units.

4 (3) An offence against this section is a strict liability offence.

1 **Part 5.2** **Preservation of site of**  
2 **dangerous occurrence**

3 **85** **Definitions for pt 5.2**

4 In this part:

5 *authorised person* means—

6 (a) an inspector; or

7 *Note* An *inspector* includes a police officer (see s 207 (1)).

8 (b) a person acting in accordance with an inspector's directions; or

9 (c) a person giving emergency medical assistance to an injured  
10 person; or

11 (d) a member of the ambulance service or fire service.

12 *site*, of a dangerous occurrence at premises, means the part of the  
13 premises where the occurrence happened.

14 *site preservation period* means the reasonable period notified by the  
15 chief executive to a person in control of the premises where a  
16 dangerous occurrence has happened or is happening.

1 **86 Person in control of premises to preserve site of**  
2 **dangerous occurrence**

3 (1) A person in control of premises where a dangerous occurrence has  
4 happened or is happening commits an offence if the person fails to  
5 take all reasonable steps to ensure that the site of the occurrence is  
6 not disturbed or interfered with until after the end of the site  
7 preservation period.

8 Maximum penalty: 100 penalty units.

9 *Note 1* An inspector may issue a prohibition notice in relation to the site of a  
10 dangerous occurrence (see s 109 (b) (iii)).

11 *Note 2* For the power of a coroner to exercise functions in relation to the site of  
12 a dangerous occurrence, see the *Coroners Act 1997*.

13 (2) This section does not apply to anything done by an authorised  
14 person.

15 (3) An offence against this section is a strict liability offence.

16 **87 Unauthorised disturbance or interference with site of**  
17 **dangerous occurrence**

18 (1) A person commits an offence if—

19 (a) a dangerous occurrence has happened or is happening at  
20 premises; and

21 (b) the person disturbs or interferes with the site of the occurrence;  
22 and

23 (c) the site preservation period for the site has not ended.

24 Maximum penalty: 100 penalty units.

25 (2) This section does not apply to anything done by an authorised  
26 person.

27 (3) An offence against this section is a strict liability offence.

1 **Chapter 6 Compliance measures**

2 **Part 6.1 Information and documents**

3 **88 Chief executive may require answers to questions and**  
4 **production of documents**

5 (1) This section applies if the chief executive believes, on reasonable  
6 grounds, that a person (the *relevant person*) may have contravened,  
7 or may be contravening, a provision of this Act.

8 *Note* A reference to an Act includes a reference to statutory instruments made  
9 or in force under the Act, including regulations and any law or  
10 instrument applied, adopted or incorporated by the Act (see Legislation  
11 Act, s 104).

12 (2) The chief executive may, by written notice given to a person  
13 (including the relevant person), require the person to attend before  
14 the chief executive at a stated reasonable time and place to do either  
15 or both of the following:

16 (a) answer questions that the chief executive considers necessary  
17 to decide whether the relevant person has contravened or is  
18 contravening this Act;

19 (b) produce the documents stated in the notice.

20 *Note* For how the notice may be served, see Legislation Act, pt 19.5.

21 (3) The chief executive may require a person to produce a document  
22 under subsection (2) (b) only if the chief executive considers the  
23 production necessary to decide whether the relevant person has  
24 contravened or is contravening this Act.

- 1 (4) The notice must—
- 2 (a) state that the requirement is made under this section; and
- 3 (b) contain a statement to the effect that failure to comply with the
- 4 notice is an offence; and
- 5 (c) if the notice requires the person to answer questions—
- 6 (i) contain a statement about the effect of section 92
- 7 (Privileges against selfincrimination and exposure to civil
- 8 liability); and
- 9 (ii) state that the person may attend with a lawyer.
- 10 (5) To remove any doubt, for this section, a person answers a question
- 11 if the person explains why the person or an entity did or did not do
- 12 something.

13 **89 Compliance with notice to produce**

- 14 (1) This section applies if a person is required by a notice under
- 15 section 88 to produce a document but not to answer questions.
- 16 (2) The person is taken to have complied with the requirement to
- 17 produce the document if the person—
- 18 (a) does not attend before the chief executive; but
- 19 (b) gives the document to the chief executive before the time
- 20 stated for attendance in the notice.

1 **90 Failure to attend before chief executive or produce**  
2 **documents**

- 3 (1) A person commits an offence if—  
4 (a) the person is required by a notice under section 88 to attend  
5 and answer questions before the chief executive; and  
6 (b) the person fails to attend before the chief executive in  
7 accordance with the notice.

8 Maximum penalty: 50 penalty units.

- 9 (2) A person commits an offence if—  
10 (a) the person is required by a notice under section 88 to produce a  
11 stated document; and  
12 (b) the person fails to produce the document.

13 Maximum penalty: 50 penalty units.

- 14 (3) An offence against this section is a strict liability offence.

15 **91 Attendance before chief executive—offences**

- 16 (1) A person commits an offence if—  
17 (a) the person is required under section 88 to attend and answer  
18 questions before the chief executive; and  
19 (b) the person attends before the chief executive; and  
20 (c) the chief executive requires the person to answer a question;  
21 and  
22 (d) the person fails to answer the question.

23 Maximum penalty: 50 penalty units.



- 1 (2) A person commits an offence if—  
2 (a) the person is required by a notice under section 88 to attend  
3 and answer questions before the chief executive; and  
4 (b) the person attends before the chief executive; and  
5 (c) the person fails to continue to attend as reasonably required by  
6 the chief executive until excused from further attendance.

7 Maximum penalty: 50 penalty units.

- 8 (3) An offence against this section is a strict liability offence.

9 **92 Privileges against selfincrimination and exposure to civil**  
10 **liability**

- 11 (1) This section applies if—  
12 (a) a person is attending before the chief executive in accordance  
13 with a requirement under section 88; and  
14 (b) the chief executive requires the person to answer a question.  
15 (2) This section also applies if a person is required by a notice under  
16 section 88 to produce a document.  
17 (3) The person cannot rely on the common law privileges against  
18 selfincrimination and exposure to the imposition of a civil penalty to  
19 refuse to answer the question or produce the document.  
20 (4) However, any information, document or thing obtained, directly or  
21 indirectly, because of the giving of the answer or the production of  
22 the document is not admissible in evidence against the person in a  
23 civil or criminal proceeding, other than a proceeding for an offence  
24 against this part or the Criminal Code, part 3.4 (False or misleading  
25 statements, information and documents).

1           **Part 6.2**                           **Compliance agreements**

2           **93**       **Meaning of *relevant responsible person* for pt 6.2**

3           In this part:

4           *relevant responsible person*, for a compliance agreement, means the  
5           responsible person for a dangerous substance who enters into the  
6           agreement.

7           **94**       **Inspector may seek compliance agreement**

- 8           (1) This section applies if an inspector believes, on reasonable grounds,  
9           that a provision of this Act has been, is being or may be contravened  
10          in relation to a dangerous substance.

11          *Note*       A reference to an Act includes a reference to statutory instruments made  
12                           or in force under the Act, including regulations and any law or  
13                           instrument applied, adopted or incorporated by the Act (see Legislation  
14                           Act, s 104).

- 15          (2) The inspector may ask a responsible person for the dangerous  
16          substance to enter into an agreement (a *compliance agreement*) in  
17          relation to the contravention.

- 18          (3) If the responsible person agrees to enter into a compliance  
19          agreement, the agreement must—

- 20           (a) state that it is a compliance agreement under this Act; and  
21           (b) state the contravention of this Act in relation to which the  
22           agreement is entered into; and  
23           (c) state the period for which the agreement is to operate; and  
24           (d) state the measures to be taken by the responsible person or  
25           anyone else to ensure this Act is complied with and the times  
26           within which the measures must be taken; and

- 1 (e) include a statement to the effect that each person who is  
2 required to comply with a duty under this Act must comply  
3 with the duty whether or not someone else may also be  
4 responsible for complying with the duty; and
- 5 (f) be signed by the inspector and the responsible person.

6 **Examples of measures for par (d)**

- 7 1 the dangerous substance is to be handled only by people with a stated  
8 qualification
- 9 2 the substance is to be handled at temperatures below 5°C
- 10 3 repair or replace particular premises or plant
- 11 4 develop, implement or amend a safety management system

12 *Note* An example is part of this Act, is not exhaustive and may extend, but  
13 does not limit, the meaning of the provision in which it appears (see  
14 Legislation Act, s 126 and s 132).

- 15 (4) The compliance agreement may include anything else the inspector  
16 and the relevant responsible person consider appropriate.
- 17 (5) The inspector must give a copy of the compliance agreement to the  
18 relevant responsible person.

19 **95 Term of compliance agreement**

- 20 (1) A compliance agreement commences when the agreement is signed  
21 by the inspector and relevant responsible person, or at any later time  
22 stated in the agreement.
- 23 (2) The compliance agreement ends—
- 24 (a) at the end of the period of operation stated in the agreement; or
- 25 (b) if the inspector and relevant responsible person agree to extend  
26 the period of operation before the end of the stated period—at  
27 the end of the extended period.

- 1 (3) If an inspector is satisfied that the compliance agreement has been  
2 complied with before it ends, the inspector must revoke the  
3 agreement by written notice given to the relevant responsible  
4 person.

5 **96 Compliance agreement not admission of fault etc**

- 6 (1) This section applies if a responsible person for a dangerous  
7 substance enters into a compliance agreement in relation to a  
8 contravention of this Act.
- 9 (2) Entering into the compliance agreement—
- 10 (a) is not an express or implied admission of fault or liability by  
11 the responsible person in relation to the contravention; and
- 12 (b) is not relevant to deciding fault or liability in relation to the  
13 contravention.
- 14 (3) Also, evidence of the existence or contents of the compliance  
15 agreement is not—
- 16 (a) admissible in a civil proceeding as evidence of the fault or  
17 liability of a person in relation to the contravention; or
- 18 (b) admissible in a criminal proceeding in relation to the  
19 contravention; or
- 20 (c) relevant to the taking of action under part 4.4 (Disciplinary  
21 action) in relation to the contravention.

22 *Note* This section does not prevent the issue of an improvement notice or  
23 prohibition notice in relation to the relevant contravention (see  
24 Legislation Act, s 44 and s 197).

1 **97 Notification and display of compliance agreements**

2 (1) This section applies to the relevant responsible person for a  
3 compliance agreement.

4 (2) The person commits an offence if the person fails to—

5 (a) tell each person (an *affected person*) whose work is affected by  
6 the measures to be taken under the agreement about the  
7 agreement, including the measures; and

8 (b) give a copy of the agreement to each other person in control of  
9 each of the premises where an affected person works.

10 Maximum penalty: 20 penalty units.

11 (3) The person commits an offence if the person fails to ensure that a  
12 copy of the agreement is displayed, while the agreement is  
13 operating, in a prominent place at or near each part of the premises  
14 affected by the contravention of this Act in relation to which the  
15 agreement was entered into.

16 Maximum penalty: 20 penalty units.

17 (4) An offence against this section is a strict liability offence.

18 **98 Compliance agreement not to be removed etc**

19 (1) A person commits an offence if—

20 (a) a copy of a compliance agreement is displayed at a place; and

21 (b) the person removes, alters, damages, defaces or covers the  
22 copy while the agreement is operating.

23 Maximum penalty: 20 penalty units.

24 (2) An offence against this section is a strict liability offence.

## Part 6.3 Improvement notices

### 99 Meaning of *relevant responsible person* for pt 6.3

In this part:

*relevant responsible person*, for an improvement notice, means the person to whom the inspector gives the notice.

### 100 Giving improvement notices

An inspector may give a notice (an *improvement notice*) to a responsible person for a dangerous substance if the inspector believes, on reasonable grounds, that a person has contravened, is contravening, or is likely to contravene, this Act.

*Note 1* For how documents may be served, see Legislation Act, pt 19.5.

*Note 2* A reference to an Act includes a reference to statutory instruments made or in force under the Act, including regulations and any law or instrument applied, adopted or incorporated by the Act (see Legislation Act, s 104).

### 101 Contents of improvement notices

(1) An improvement notice may require the relevant responsible person to do 1 or more of the following:

- (a) put stated premises, plant or a system for handling the dangerous substance into a safe condition, including, for example, by repairing or replacing the premises, plant or system;
- (b) prepare, implement or amend a safety management system in relation to the handling of the substance;

- 1 (c) take stated measures to carry out the requirements of a safety  
2 management system in relation to the handling of the  
3 substance;
- 4 (d) destroy or otherwise dispose of the substance;
- 5 (e) comply with a particular provision of this Act in relation to the  
6 handling of the substance;
- 7 (f) do anything else to ensure that this Act is complied with in  
8 relation to the substance.

9 *Note* An example is part of the Act, is not exhaustive and may extend, but  
10 does not limit, the meaning of the provision in which it appears (see  
11 Legislation Act, s 126 and s 132).

12 (2) Also, the improvement notice must—

- 13 (a) state that it is an improvement notice under this Act; and
- 14 (b) state the contravention of this Act in relation to which the  
15 notice is given; and
- 16 (c) state the period for complying with the notice; and
- 17 (d) include a statement to the effect that each person who is  
18 required to comply with a duty under this Act must comply  
19 with the duty whether or not someone else may also be  
20 responsible for complying with the duty.

21 (3) The improvement notice may include any other information the  
22 inspector considers appropriate.

1 **102 Extension of time for compliance with improvement**  
2 **notices**

- 3 (1) This section applies if a responsible person for a dangerous  
4 substance has been given an improvement notice.
- 5 (2) An inspector may, by written notice given to the responsible person,  
6 extend the compliance period for the improvement notice on the  
7 inspector's own initiative or if asked by the responsible person.
- 8 (3) However, the inspector may extend the compliance period only if  
9 the period has not ended.
- 10 (4) In this section:
- 11 *compliance period* means the period stated in the improvement  
12 notice under section 101 (2) (c), and includes that period as  
13 extended under this section.

14 **103 Notification and display of improvement notices**

- 15 (1) This section applies to the relevant responsible person for an  
16 improvement notice.
- 17 (2) The person commits an offence if the person fails to—
- 18 (a) tell each person (an *affected person*) whose work is affected by  
19 anything required to be done under the notice about the notice,  
20 including the things required to be done under it; and
- 21 (b) give a copy of the notice to each person in control of each of  
22 the premises where an affected person works.
- 23 Maximum penalty: 20 penalty units.



- 1 (3) The person commits an offence if the person fails to ensure that a  
2 copy of the notice is displayed, while the notice is in force, in a  
3 prominent place at or near each part of the premises affected by the  
4 contravention of this Act in relation to which the notice was given.

5 Maximum penalty: 20 penalty units.

- 6 (4) An offence against this section is a strict liability offence.

7 **104 Improvement notice not to be removed etc**

- 8 (1) A person commits an offence if—

- 9 (a) a copy of an improvement notice is displayed at a place; and  
10 (b) the person removes, alters, damages, defaces or covers the  
11 copy while the notice is in force.

12 Maximum penalty: 20 penalty units.

- 13 (2) An offence against this section is a strict liability offence.

14 **105 Scope of improvement notices**

- 15 (1) An improvement notice for a dangerous substance may relate to 1 or  
16 more of the following:

- 17 (a) premises, or part of premises, for handling the substance;  
18 (b) plant or a system for handling the substance;  
19 (c) handling the substance in a stated way or for a stated purpose.

20 *Note* **Premises** includes any land, structure or vehicle and any part of an area  
21 of land, a structure or vehicle (see dict).

- 22 (2) A requirement in an improvement notice to destroy or otherwise  
23 dispose of a dangerous substance may state either or both of the  
24 following:

- 25 (a) how the substance must be destroyed or otherwise disposed of;

1 (b) how the substance must be kept until it is destroyed or  
2 otherwise disposed of.

3 *Note* A requirement to destroy or otherwise dispose of a substance may be  
4 made under s 101 (1) (d).

5 **106 Revocation of improvement notice on compliance**

6 If an inspector is satisfied that an improvement notice has been  
7 complied with, the inspector must revoke the notice by written  
8 notice given to the relevant responsible person.

9 **107 Contravention of improvement notices**

10 (1) The relevant responsible person for an improvement notice commits  
11 an offence if the person fails to take all reasonable steps to comply  
12 with a requirement of the notice.

13 Maximum penalty: 100 penalty units.

14 *Note* If an improvement notice is given to 2 or more responsible people for a  
15 dangerous substance, each of them must comply with the notice  
16 (see s 21).

17 (2) An offence against this section is a strict liability offence.

1 **Part 6.4** **Prohibition notices**

2 **108 Definitions for pt 6.4**

3 In this part:

4 *basis*, for giving a prohibition notice, means—

- 5 (a) the contravention of this Act in relation to which the  
6 prohibition notice was given (see section 109 (a)); or
- 7 (b) the risk to be prevented or minimised under the notice (see  
8 section 109 (b) (i)); or
- 9 (c) the inspection, testing or monitoring to be allowed under the  
10 notice (see section 109 (b) (ii)); or
- 11 (d) the accident or other incident to be investigated under the  
12 notice (see section 109 (b) (iii)).

13 *dangerous substance*, to which a prohibition notice relates, means  
14 the dangerous substance stated in the notice for section 110 (2) (a)  
15 (ii).

16 *premises*, to which a prohibition notice relates, means premises  
17 stated in the notice for section 110 (2) (a) (ii).

18 *relevant responsible person*, for a prohibition notice, means the  
19 responsible person for a dangerous substance to whom the notice is  
20 given.

21 **109 Giving prohibition notices**

22 An inspector may give a notice (a *prohibition notice*) to a  
23 responsible person for a dangerous substance at premises if the  
24 inspector believes, on reasonable grounds—

- 1 (a) that someone at the premises has contravened, is contravening,  
2 or is likely to contravene, this Act in relation to the substance;  
3 or
- 4 (b) that giving the notice is necessary—
- 5 (i) to prevent or minimise risk of serious harm to the health  
6 or safety of people, or substantial damage to property or  
7 the environment, from a hazard at the premises associated  
8 with the substance; or
- 9 (ii) to allow the inspection, testing or monitoring of anything  
10 at the premises used in relation to the handling of the  
11 substance; or
- 12 (iii) to allow the investigation of an accident or other incident  
13 (including a dangerous occurrence) at the premises in  
14 relation to the substance.

15 **Example for par (b) (ii)**

16 to allow for routine compliance testing of plant and systems if the responsible  
17 person has not voluntarily agreed to the plant or system being shutdown for the  
18 test

19 *Note 1* For how documents may be served, see Legislation Act, pt 19.5.

20 *Note 2* A reference to an Act includes a reference to statutory instruments made  
21 or in force under the Act, including regulations and any law or  
22 instrument applied, adopted or incorporated by the Act (see Legislation  
23 Act, s 104).

24 *Note 3* An example is part of this Act, is not exhaustive and may extend, but  
25 does not limit, the meaning of the provision in which it appears (see  
26 Legislation Act, s 126 and s 132).

1 **110 Contents of prohibition notices**

2 (1) A prohibition notice in relation to a dangerous substance at premises  
3 may require a responsible person for the substance not to do 1 or  
4 more of the following until the notice ends:

5 (a) use stated premises, plant, systems, substances or things;

6 (b) disturb stated premises, plant, systems, substances or things;

7 (c) something else at or in relation to the premises.

8 *Note* **Premises** includes any land, structure or vehicle and any part of an area  
9 of land, a structure or vehicle (see dict).

10 (2) Also, the prohibition notice—

11 (a) must state the following:

12 (i) that it is a prohibition notice under this Act;

13 (ii) the dangerous substance and premises to which the notice  
14 relate;

15 (iii) the basis for giving the notice; and

16 (b) if the notice is given under section 109 (a) or (b) (i) (which are  
17 about notices given in relation to contravention of this Act or  
18 to prevent or minimise risk of serious harm or substantial  
19 damage)—must include a statement to the effect that the  
20 relevant responsible person may ask for a reinspection of the  
21 situation or circumstances that caused the notice to be given if  
22 the person considers that the situation or circumstances comply  
23 with this Act; and

24 (c) if the notice is given under section 109 (b) (ii) or (iii) (which  
25 are about notices given to allow inspection, testing, monitoring  
26 and investigation)—must state the reasonable period that the  
27 inspector considers necessary to carry out the inspection,  
28 testing, monitoring or investigation to which the notice relates.

1 **111 Extension of time for inspection etc**

2 (1) This section applies if a prohibition notice is given under  
3 section 109 (b) (ii) or (iii).

4 (2) An inspector may, by written notice given to the relevant  
5 responsible person for the prohibition notice, extend the relevant  
6 period for the notice on the inspector's own initiative or if asked by  
7 the relevant responsible person.

8 (3) However, the inspector may extend the relevant period only if the  
9 period has not ended.

10 (4) In this section:

11 *relevant period* means the period stated in the prohibition notice  
12 under section 110 (2) (c), and includes that period as extended under  
13 this section.

14 **112 Notification and display of prohibition notices**

15 (1) This section applies to the relevant responsible person for a  
16 prohibition notice.

17 (2) The person commits an offence if the person fails to—

18 (a) tell each person who works at the premises to which the notice  
19 relates about the notice, including anything required to be done  
20 under it; or

21 (b) give a copy of the notice to each other responsible person for  
22 the dangerous substance to which the notice relates.

23 Maximum penalty: 20 penalty units.

- 1 (3) The person commits an offence if the person fails to ensure that a  
2 copy of the prohibition notice is displayed in a prominent place, at  
3 or near each part of the premises to which the notice relates, while  
4 the notice is in force.

5 Maximum penalty: 20 penalty units.

- 6 (4) An offence against this section is a strict liability offence.

7 **113 Prohibition notice not to be removed etc**

- 8 (1) A person commits an offence if—

- 9 (a) a copy of a prohibition notice is displayed at a place; and  
10 (b) the person removes, alters, damages, defaces or covers the  
11 copy while the notice is in force.

12 Maximum penalty: 20 penalty units.

- 13 (2) An offence against this section is a strict liability offence.

14 **114 Scope of prohibition notices**

15 A prohibition notice for a dangerous substance may relate to either  
16 or both of the following:

- 17 (a) plant or a system for handling the substance;  
18 (b) handling of the substance in a stated way or for a stated  
19 purpose.

20 **115 Ending of prohibition notices for contravention of Act etc**

- 21 (1) This section applies to a prohibition notice if the notice was given  
22 under section 109 (a) or (b) (i) (which are about notices given in  
23 relation to contravention of this Act or to prevent or minimise risk  
24 of serious harm or substantial damage).

- 25 (2) The prohibition notice ends when the notice is revoked under  
26 section 117.

1 **116 Request for reinspection**

- 2 (1) This section applies to a prohibition notice given under  
3 section 109 (a) or (b) (i).
- 4 (2) The relevant responsible person for the prohibition notice may ask  
5 the chief executive, in writing, for a reinspection of the situation or  
6 circumstances that caused the notice to be given if the person  
7 considers that the situation or circumstances comply with this Act.
- 8 (3) If the request relates to a vehicle or equipment, the vehicle or  
9 equipment must be made available for reinspection where it was  
10 originally inspected or at another place agreed to by an inspector.

11 **117 Revocation on reinspection**

- 12 (1) This section applies if a request has been made under section 116.
- 13 (2) If the inspector who carries out the reinspection is satisfied that there  
14 are no grounds for the prohibition notice to continue to operate, the  
15 inspector may revoke the notice by written notice given to the  
16 relevant responsible person for the prohibition notice.
- 17 (3) Also, the prohibition notice is taken to be revoked on the 3rd  
18 business day after the day the request for reinspection is received by  
19 the chief executive if—
- 20 (a) an inspector does not make the reinspection within 2 business  
21 days after the day the request is received; and
- 22 (b) the person who made the request is not responsible, completely  
23 or partly, for the delay in making the reinspection.
- 24 *Note* For the meaning of *business day*, see Legislation Act, dict, pt 1.
- 25 (4) Subsection (3) does not prevent an improvement notice or another  
26 prohibition notice being given to the same person in relation to the  
27 same contravention of this Act.



1 **118 Ending of prohibition notices given for inspection etc**

2 (1) This section applies to a prohibition notice if the notice was given  
3 under section 109 (b) (ii) or (iii) (which are about notices given to  
4 allow inspection, testing, monitoring and investigation).

5 (2) The prohibition notice ends at the end of the period stated in the  
6 notice under section 110 (2) (c) (Contents of prohibition notices) or,  
7 if the period is extended under section 111, the end of the extended  
8 period.

9 **119 Contravention of prohibition notices**

10 (1) A relevant responsible person for a dangerous substance to which a  
11 prohibition notice is given commits an offence if the person fails to  
12 take all reasonable steps to ensure the notice is not contravened.

13 Maximum penalty: 200 penalty units.

14 (2) An offence against this section is a strict liability offence.

15 **120 Request for compensation for prohibition notice**

16 (1) This section applies if—

17 (a) a prohibition notice is given in relation to premises; and

18 (b) a person suffers loss or expense because of the giving of the  
19 notice; and

20 (c) the person considers that there were insufficient grounds for  
21 giving the notice.

22 (2) The person may apply, in writing, to the Minister for compensation.

23 (3) The application must give reasons why the person considers that  
24 there were insufficient grounds for giving the prohibition notice.

1 **121 Compensation for prohibition notice**

- 2 (1) This section applies if a person applies under section 120 for  
3 compensation in relation to the giving of a prohibition notice.
- 4 (2) If, after considering the application, the Minister is satisfied that  
5 there were insufficient grounds for giving the prohibition notice, the  
6 Territory must pay the person the reasonable compensation decided  
7 by the Minister.
- 8 (3) However, compensation is not payable to the person—
- 9 (a) in relation to any loss or expense suffered by the person  
10 because of an act or omission of the person; or
- 11 (b) if the person caused or contributed to the situation or  
12 circumstances that caused the prohibition notice to be given.
- 13 (4) The Minister must give the person written notice of the Minister's  
14 decision on the application.
- 15 (5) If the Minister does not decide the application within 28 days after  
16 the day the Minister receives the application, the Minister is taken to  
17 have refused to pay compensation.

1 **Part 6.5** **Enforceable undertakings**

2 **122 Definitions for pt 6.5**

3 In this part:

4 *alleged contravention*—see section 123 (3) (b).

5 *enforceable undertaking* means a safety undertaking that has been  
6 accepted under section 124.

7 *relevant person*, for an enforceable undertaking, means the person  
8 who gave the undertaking.

9 *safety undertaking*—see section 123 (2).

10 **123 Making of safety undertakings**

- 11 (1) This section applies if the chief executive alleges that a person has  
12 contravened a provision of this Act in relation to a dangerous  
13 substance.

14 *Note* A reference to an Act includes a reference to statutory instruments made  
15 or in force under the Act, including regulations and any law or  
16 instrument applied, adopted or incorporated by the Act (see Legislation  
17 Act, s 104).

- 18 (2) The person may give the chief executive a written undertaking (a  
19 *safety undertaking*) to comply with the provision in relation to the  
20 substance.

- 21 (3) The safety undertaking must—

- 22 (a) state that it is an enforceable undertaking under this Act; and  
23 (b) acknowledge that the chief executive alleges that the person  
24 has contravened a stated provision of this Act (the *alleged*  
25 *contravention*); and

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- 1 (c) identify the facts and circumstances of the alleged  
2 contravention; and
- 3 (d) include 1 or more undertakings relating to the alleged  
4 contravention; and
- 5 (e) include a statement to the effect that each person who is  
6 required to comply with a duty under this Act must comply  
7 with the duty whether or not someone else may also be  
8 responsible for complying with the duty.

9 **Examples of undertakings**

- 10 1 to cease a certain conduct
- 11 2 to take particular action to compensate people adversely affected by a  
12 contravention of this Act
- 13 3 to take particular action to rectify a state of affairs that arose as a direct or  
14 indirect result of the contravention
- 15 4 to take particular action (including implementing particular systems) to  
16 prevent future contraventions of this Act
- 17 5 to implement publicity or education programs

18 *Note* An example is part of this Act, is not exhaustive and may extend, but  
19 does not limit, the meaning of the provision in which it appears (see  
20 Legislation Act, s 126 and s 132).

21 **124 Acceptance of safety undertaking**

- 22 (1) The chief executive may accept a safety undertaking by written  
23 notice given to the person who gave the undertaking.
- 24 (2) On the acceptance of the safety undertaking, the undertaking  
25 becomes an enforceable undertaking.

1 **125 Withdrawal from or amendment of enforceable**  
2 **undertaking**

- 3 (1) A relevant person for an enforceable undertaking may withdraw  
4 from or amend the undertaking only with the chief executive's  
5 written agreement.
- 6 (2) However, the enforceable undertaking may not be amended to  
7 provide for a different alleged contravention.

8 **126 Term of enforceable undertaking**

- 9 (1) A safety undertaking is enforceable from the time it becomes an  
10 enforceable undertaking.
- 11 (2) The chief executive may end an enforceable undertaking by written  
12 notice to the relevant person for the undertaking if satisfied that the  
13 undertaking is no longer necessary or desirable.
- 14 (3) The chief executive may act under subsection (2) on the chief  
15 executive's own initiative or on the application of the relevant  
16 person for the enforceable undertaking.
- 17 (4) The undertaking ends when the relevant person for the enforceable  
18 undertaking receives the chief executive's notice.

19 **127 Safety undertaking not admission of fault etc**

- 20 (1) This section applies if a person gives the chief executive a safety  
21 undertaking, whether or not the undertaking is accepted by the chief  
22 executive.
- 23 (2) Giving the safety undertaking—
- 24 (a) is not an express or implied admission of fault or liability by  
25 the person in relation to the alleged contravention; and
- 26 (b) is not relevant to deciding fault or liability in relation to the  
27 alleged contravention.

- 1 **128 Contravention of enforceable undertakings**
- 2 (1) If the chief executive believes, on reasonable grounds, that an
- 3 enforceable undertaking has been contravened by anyone, the chief
- 4 executive may apply to the Magistrates Court for an order under
- 5 subsection (2).
- 6 (2) If the Magistrates Court is satisfied that the enforceable undertaking
- 7 has been contravened, the court may make 1 or more of the
- 8 following orders:
- 9 (a) an order requiring the relevant person for the undertaking to
- 10 ensure that the undertaking is not contravened;
- 11 (b) an order requiring the relevant person for the undertaking to
- 12 pay to the Territory the amount assessed by the court as the
- 13 value of the benefits anyone derived, directly or indirectly,
- 14 from the contravention of the undertaking;
- 15 (c) an order that the court considers appropriate requiring the
- 16 relevant person for the undertaking to compensate someone
- 17 who has suffered loss or damage because of the contravention
- 18 of the undertaking;
- 19 (d) any other order that the court considers appropriate.
- 20 (3) A person commits an offence if the person fails to take all
- 21 reasonable steps to comply with an order under subsection (2).
- 22 Maximum penalty: 200 penalty units.
- 23 (4) An offence against this section is a strict liability offence.

1 **Part 6.6** **Injunctions**

2 **129 Injunctions to restrain offences against Act**

- 3 (1) This section applies if a person has committed, is committing, or is  
4 likely to commit, an offence against this Act.

5 *Note 1* A reference to an offence against a Territory law includes a reference to  
6 an offence against the Criminal Code, part 2.4 (Extensions of criminal  
7 responsibility) or the *Crimes Act 1900*, section 181 (Accessory after the  
8 fact) that relates to the Territory law (see Legislation Act, s 189).

9 *Note 2* A reference to an Act includes a reference to statutory instruments made  
10 or in force under the Act, including regulations and any law or  
11 instrument applied, adopted or incorporated by the Act (see Legislation  
12 Act, s 104).

- 13 (2) The chief executive or any other interested person may apply to the  
14 Magistrates Court for an injunction.

- 15 (3) On application under subsection (2), the Magistrates Court may  
16 grant an injunction restraining the person from contravening this Act  
17 (including by requiring the person to do something).

- 18 (4) The Magistrates Court may grant the injunction—

19 (a) whether or not it appears to the court that the person intends to  
20 contravene this Act, contravene this Act again or continue to  
21 contravene this Act; and

22 (b) whether or not the person has previously contravened this Act;  
23 and

24 (c) whether or not there is a likelihood of the health or safety of a  
25 person being affected by, or property or the environment being  
26 damaged by, a hazard if the person contravenes this Act; and

27 (d) whether or not a proceeding for an offence against this Act has  
28 begun or is about to begin.

- 1 (5) The Magistrates Court may grant an interim injunction restraining  
2 the person from committing an offence against this Act (including  
3 requiring the person to do something) before deciding an application  
4 for an injunction under this section.

5 **130 Enforcement of injunctions**

6 The Magistrates Court has the same powers as the Supreme Court to  
7 enforce an injunction (including an interim injunction) made under  
8 this part.

9 **131 Amendment or discharge of injunctions**

10 The Magistrates Court may amend or discharge an injunction  
11 (including an interim injunction) made under this part on the  
12 application of the chief executive or any other interested person.

13 **132 Interim injunctions—undertakings about damages**

14 (1) If the chief executive applies for an injunction under this part, the  
15 Magistrates Court must not require the chief executive to give an  
16 undertaking about costs or damages as a condition of granting an  
17 interim injunction.

18 (2) The Magistrates Court must accept an undertaking from the chief  
19 executive about costs or damages, and not require a further  
20 undertaking from anyone else, if—

21 (a) the applicant for an injunction under this part is not the chief  
22 executive; and

23 (b) the court would, apart from this subsection, require the  
24 applicant to give an undertaking about costs or damages; and

25 (c) the chief executive gives the undertaking.



1 **133 Magistrates Court's other powers not limited**

2 (1) The powers given to the Magistrates Court under this part are in  
3 addition to any other powers of the court.

4 (2) In particular, an application to the Magistrates Court for an  
5 injunction under this part may be made without notice to the person  
6 against whom the injunction is sought.

1 **Part 6.7** **Taking and analysis of**  
2 **samples**

3 **134 Inspector may buy samples without complying with pt 6.7**

4 This part does not stop an inspector from buying a sample of a  
5 substance for analysis for the routine monitoring of compliance with  
6 this Act without complying with the requirements of this part.

7 *Note* For the admissibility of the analysis of a sample of a substance taken by  
8 an inspector, see s 204.

9 **135 Person in control etc to be told sample to be analysed**

- 10 (1) This section applies if an inspector proposes to take, or takes, a  
11 sample of a substance for analysis from premises where a dangerous  
12 substance is handled.
- 13 (2) Before or as soon as practicable after taking the sample, the  
14 inspector must tell a person in charge of the premises of the  
15 inspector's intention to have the sample analysed.
- 16 (3) If a person in charge is not present or readily available, the inspector  
17 must instead tell the person from whom the sample was obtained of  
18 the inspector's intention to have the sample analysed.

19 **136 Payment for samples**

- 20 (1) This section applies if an inspector takes a sample of a substance for  
21 analysis from premises where a dangerous substance is handled.
- 22 (2) The inspector must pay, or offer to pay, to the person from whom  
23 the sample is taken—
- 24 (a) the amount (if any) prescribed under the regulations as the  
25 amount payable for the sample; or

- 1 (b) if no amount is prescribed—the current market value of the  
2 sample.

3 **137 Samples from packaged substances**

4 If a package of a substance contains 2 or more smaller packages of  
5 the same substance, the inspector may take 1 of the smaller  
6 packages for analysis.

7 **138 Procedures for dividing samples**

- 8 (1) This section applies to a sample of a substance being taken by an  
9 inspector for analysis and is subject to section 139.
- 10 (2) The inspector must—
- 11 (a) divide the sample into 3 separate parts, and mark and seal or  
12 fasten each part; and
- 13 (b) leave 1 part with the person told under section 135 (Person in  
14 control etc to be told sample to be analysed) of the inspector's  
15 intention to have the sample analysed; and
- 16 (c) keep 1 of the parts for analysis; and
- 17 (d) keep 1 part for future comparison with the other parts of the  
18 sample.
- 19 (3) If a sample of a substance taken by an inspector is in the form of  
20 separate or severable objects, the inspector—
- 21 (a) may take a number of the objects; and
- 22 (b) divide them into 3 parts each consisting of 1 or more of the  
23 objects, or of the severable parts of the objects, and mark and  
24 seal or fasten each part; and
- 25 (c) deal with the sample under subsection (2) (b) to (d).

1 **139 Exception to s 138**

- 2 (1) This section applies to a sample of a substance being taken by an  
3 inspector for analysis if dividing the substance into 3 separate parts  
4 would, in the inspector's opinion—
- 5 (a) so affect or impair the composition or quality of the sample as  
6 to make the separate parts unsuitable for accurate analysis; or
- 7 (b) result in the separate parts being of an insufficient size for  
8 accurate analysis; or
- 9 (c) otherwise make the sample unsuitable for analysis (including a  
10 method of analysis prescribed under the regulations for the  
11 substance in relation to which the sample was taken).
- 12 (2) The inspector may take as many samples as the inspector considers  
13 necessary to allow an accurate analysis to be made, and may deal  
14 with the sample or samples in any way that is appropriate in the  
15 circumstances, instead of complying with section 138.

16 **140 Certificates of analysis by authorised analysts**

- 17 (1) The analysis of a sample of a substance for the chief executive must  
18 be carried out by, or under the supervision of, an authorised analyst.
- 19 (2) The authorised analyst must give to the chief executive a certificate  
20 of analysis that—
- 21 (a) is signed and dated by the analyst; and
- 22 (b) contains a written report of the analysis that sets out the  
23 findings; and
- 24 (c) identifies the method of analysis.

25 *Note 1* If a form is approved under s 222 for the certificate, the form must be  
26 used.

27 *Note 2* For the evidentiary status of a certificate under this section, see s 203.

1 **Chapter 7**            **Enforcement powers**

2 **Part 7.1**            **General**

3 **141**    **Definitions for ch 7**

4        In this chapter:

5        *connected*—a thing is *connected* with an offence if—

- 6            (a) the offence has been committed in relation to it; or
- 7            (b) it will provide evidence of the commission of the offence; or
- 8            (c) it was used, is being used, or is intended to be used, to commit
- 9            the offence.

10        *data* includes—

- 11            (a) information in any form; and
- 12            (b) a program (or part of a program).

13        *data storage device* means a thing containing, or designed to

14        contain, data for use by a computer.

15        *offence* includes an offence that there are reasonable grounds for

16        believing has been, is being, or will be, committed.

17        *person assisting*, in relation to a search warrant, means a person

18        who has been authorised by an inspector to assist in executing the

19        warrant.

20        *search warrant* means a warrant issued under part 7.3 (Search

21        warrants) that is in force.

## 1 Part 7.2 General powers of inspectors

### 2 142 General power to enter premises

3 (1) For this Act, an inspector may—

4 (a) at any reasonable time, enter premises that the inspector  
5 believes, on reasonable grounds, are—

6 (i) premises used in relation to the handling of dangerous  
7 substances; or

8 (ii) premises where there are documents relating to the  
9 handling of dangerous substances or plant or a system for  
10 handling dangerous substances; or

11 (b) at any reasonable time, enter premises that the public is entitled  
12 to use or that are open to the public (whether or not on  
13 payment of money); or

14 (c) at any time, enter premises with the consent of a person in  
15 charge of the premises; or

16 (d) enter premises in accordance with a search warrant; or

17 (e) at any time, enter premises if the inspector believes, on  
18 reasonable grounds, that the circumstances are of such  
19 seriousness and urgency as to require immediate entry to the  
20 premises without the authority of a search warrant.

21 *Note* **Premises** includes any land, structure or vehicle and any part of an area  
22 of land, a structure or vehicle (see dict).

23 (2) However, subsection (1) (a) does not authorise entry into a part of  
24 premises that is being used only for residential purposes unless that  
25 part of the premises is being used in relation to the handling of  
26 dangerous substances.

- 1 (3) For subsection (1), an inspector may stop and detain a vehicle that  
2 the inspector believes, on reasonable grounds—
- 3 (a) is carrying dangerous substances; or
- 4 (b) contains documents relating to the handling of dangerous  
5 substances or plant or a system for handling dangerous  
6 substances.
- 7 (4) For subsection (3), the inspector—
- 8 (a) may direct the driver of the vehicle to move the vehicle to a  
9 place (or another place) to which the public has access; and
- 10 (b) may exercise the inspector's powers in relation to the vehicle at  
11 the place; and
- 12 (c) must not detain the vehicle for longer than is reasonably  
13 necessary to exercise the inspector's powers under this chapter.
- 14 (5) An inspector may, without the consent of a person in charge of  
15 premises, enter the land around the premises to ask for consent to  
16 enter the premises.
- 17 (6) To remove any doubt, an inspector may enter premises under  
18 subsection (1) without payment of any entry fee or other charge.
- 19 (7) For subsection (1) (e), the inspector may enter the premises with any  
20 necessary assistance and force.
- 21 (8) In this section:
- 22 *at any reasonable time* means at any time—
- 23 (a) for subsection (1) (a) (i)—during normal business hours or any  
24 other time when the premises are being used in relation to the  
25 handling of dangerous substances; or
- 26 (b) for subsection (1) (a) (ii)—during normal business hours; or

- 1 (c) for subsection (1) (b)—when the public is entitled to use the  
2 premises, or when the premises are open to or used by the  
3 public, whether or not on payment of money.

4 **143 Production of identity card**

5 An inspector must not remain at premises entered under this chapter  
6 if the inspector does not produce his or her identity card for  
7 inspection when asked by a person in charge of the premises.

8 **144 Consent to entry**

9 (1) When seeking the consent of a person in charge of premises to enter  
10 the premises under section 142 (1) (c) (General power to enter  
11 premises), an inspector must—

12 (a) produce his or her identity card; and

13 (b) tell the person—

14 (i) the purpose of the entry; and

15 (ii) that anything found and seized under this chapter may be  
16 used in evidence in court; and

17 (iii) that consent may be refused.

18 (2) If the person in charge consents, the inspector must ask the person to  
19 sign a written acknowledgment (an *acknowledgment of consent*)—

20 (a) that the person was told—

21 (i) the purpose of the entry; and

22 (ii) that anything found and seized under this chapter may be  
23 used in evidence in court; and

24 (iii) that consent may be refused; and

25 (b) that the person consented to the entry; and

26 (c) stating the time and date when consent was given.



- 1 (3) If the person in charge signs an acknowledgment of consent, the  
2 inspector must immediately give a copy to the person.
- 3 (4) A court must find that a person in charge of premises did not  
4 consent to an entry to the premises by an inspector under this  
5 chapter if—
- 6 (a) the question whether the person consented to the entry arises in  
7 a proceeding in the court; and
- 8 (b) an acknowledgment of consent for the entry is not produced in  
9 evidence for the entry; and
- 10 (c) it is not proved that the person consented to the entry.

11 **145 General powers of inspectors—premises**

12 An inspector who enters premises under this chapter may, for this  
13 Act, do 1 or more of the following in relation to the premises or  
14 anything at the premises:

- 15 (a) examine anything at the premises;
- 16 (b) examine and copy, or take extracts from, documents relating  
17 to—
- 18 (i) the handling of dangerous substances; or
- 19 (ii) plant or a system used for handling dangerous  
20 substances;
- 21 (c) examine and copy, or take extracts from, any packaging,  
22 labelling or advertising material;
- 23 (d) open (or require to be opened) any container or package that  
24 the inspector believes, on reasonable grounds—
- 25 (i) contains a dangerous substance or equipment; or
- 26 (ii) is, or has been, used in relation to the carrying of a  
27 dangerous substance;

- 1 (e) open or operate (or require to be opened or operated) plant or a  
2 system;
- 3 (f) take for analysis samples of water, soil or anything else that is  
4 part of the environment to find out whether the environment  
5 poses a risk to the health or safety of people;
- 6 (g) subject to part 6.7 (Taking and analysis of samples), take for  
7 analysis samples of anything else (including any substance) at  
8 the premises;
- 9 (h) carry out any other examination to find out whether this Act is  
10 being complied with;
- 11 (i) take measurements, conduct tests and make sketches, drawings  
12 or any other kind of record (including photographs, films, or  
13 audio, video or other recordings);
- 14 (j) under section 152, seize a thing at the premises;
- 15 (k) take onto the premises any people, equipment or material the  
16 inspector reasonably needs to exercise a power under this Act;
- 17 (l) require a person in charge of the premises, or anyone at the  
18 premises, to give information, answer questions, or produce  
19 documents or anything else, reasonably needed to exercise the  
20 inspector's functions under this Act;

21 *Note* The Legislation Act, s 170 and s 171 deal with the application of  
22 the privilege against selfincrimination and client legal privilege.

- 23 (m) require a person in charge of the premises, or anyone at the  
24 premises, to give the inspector reasonable assistance to  
25 exercise a function under this chapter.

26 *Note 1* **At** premises includes in or on the premises (see dict).

27 *Note 2* **Examine** includes inspect, weigh, count, test or measure (see dict).

28 *Note 3* A reference to an Act includes a reference to statutory instruments made  
29 or in force under the Act, including regulations and any law or

1 instrument applied, adopted or incorporated by the Act (see Legislation  
2 Act, s 104).

3 **146 General powers of inspectors for public places**

4 (1) An inspector may exercise 1 or more of the powers mentioned in  
5 section 145 in relation to a substance at a public place if the  
6 inspector suspects, on reasonable grounds, that the substance is a  
7 dangerous substance.

8 (2) This Act applies in relation to the exercise of a power under  
9 subsection (1) as if—

10 (a) the public place were premises entered by the inspector under  
11 this chapter; and

12 (b) all other necessary changes were made.

13 (3) Without limiting subsection (2), if a person is required to do  
14 something by an inspector under subsection (1), the person need not  
15 comply with the requirement if the inspector does not produce his or  
16 her identity card for inspection when asked by the person.

17 (4) However, subsection (3) does not apply in relation to an inspector  
18 who is a police officer in uniform.

19 **147 Contravention of requirement by inspector**

20 A person must take all reasonable steps to comply with a  
21 requirement made of the person under section 145 (l) or (m)  
22 (including a requirement made in relation to a substance at a public  
23 place).

24 Maximum penalty: 50 penalty units.

25 *Note* The Legislation Act, s 170 and s 171 deal with the application of the  
26 privilege against selfincrimination and client legal privilege.

- 1 **148 Power to take action to prevent etc imminent risk**
- 2 (1) This section applies if an inspector believes, on reasonable grounds  
3 that—
- 4 (a) there is an imminent risk of serious harm to a person, or of  
5 substantial damage to property or the environment, in relation  
6 to a dangerous substance at premises or from plant or a system  
7 for handling a dangerous substance at the premises; and
- 8 (b) it is necessary for the inspector to take action without delay to  
9 prevent or minimise the risk.
- 10 *Note 1* **At** premises includes in or on the premises (see dict).
- 11 *Note 2* **Premises** includes any land, structure or vehicle and any part of an area  
12 of land, a structure or vehicle (see dict).
- 13 (2) This section applies even if an inspector has given a responsible  
14 person for the premises an improvement or prohibition notice in  
15 relation to the premises and the time for complying with the notice  
16 has not ended.
- 17 (3) The inspector may take the action the inspector believes, on  
18 reasonable grounds, is necessary to prevent or minimise the risk.
- 19 (4) For subsection (3), the inspector may enter the premises with any  
20 necessary assistance and force.
- 21 (5) In deciding the action to be taken, the inspector must, to the extent  
22 that is reasonably practicable, consult with a person in charge of the  
23 premises and the chief executive.
- 24 (6) The action an inspector may take includes asking someone the  
25 inspector believes, on reasonable grounds, has appropriate  
26 knowledge and experience to help the inspector prevent or minimise  
27 the risk.

- 1 (7) If an inspector asks someone to help under subsection (6), the  
2 person is taken to have the powers of an inspector to the extent  
3 reasonably necessary for the person to help prevent or minimise the  
4 risk.
- 5 (8) The power to enter premises under this section is additional to the  
6 powers under section 142 (General power to enter premises).

7 **149 Report about action under s 148**

8 As soon as practicable after taking action under section 148, an  
9 inspector must—

- 10 (a) prepare a report that outlines why the action was taken, the  
11 action that was taken and any damage to property because of  
12 the action; and
- 13 (b) give a copy of the report to a person in charge of the premises  
14 and the chief executive.

15 **150 Recovery of Territory's costs for action under s 148**

- 16 (1) This section applies if an inspector takes action under  
17 section 148 (3) (Power to take action to prevent etc imminent risk)  
18 to prevent or minimise a risk.
- 19 (2) Costs incurred by the Territory in relation to the action are a debt  
20 owing to the Territory by, and are recoverable together and  
21 separately from, the following people:
- 22 (a) the person who owned the dangerous substance to which the  
23 risk related;
- 24 (b) each person in control of the premises where the action was  
25 taken;
- 26 (c) the person who caused the risk.
- 27 (3) However, costs are not recoverable from a person if the person  
28 establishes that—

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- 1 (a) the risk was caused by the act or omission of someone other  
2 than the person or the person's employee or agent; and
- 3 (b) reasonable precautions were taken and appropriate diligence  
4 was exercised by the person to avoid the act or omission.
- 5 (4) This section does not limit the powers the Territory has apart from  
6 this Act.

7 **151 Power of entry etc in relation to dangerous occurrences**

- 8 (1) This section applies if an inspector believes, on reasonable grounds,  
9 that a dangerous occurrence has happened, is happening or is about  
10 to happen at premises.
- 11 (2) The inspector may enter the premises to investigate the dangerous  
12 occurrence, ensure the premises are safe and prevent the  
13 concealment, loss or destruction of anything reasonably relevant to  
14 the investigation of the occurrence.
- 15 (3) For subsection (2), the inspector may enter the premises with any  
16 necessary assistance and force.
- 17 (4) The inspector may do anything reasonably necessary for a purpose  
18 mentioned in subsection (2).
- 19 (5) If an inspector acts under this section in the absence of a person in  
20 charge of the premises, the inspector must, when leaving the  
21 premises, leave a written notice, secured in a conspicuous place,  
22 setting out—
- 23 (a) the inspector's name; and
- 24 (b) the time and date of the entry; and
- 25 (c) the purpose of the entry; and
- 26 (d) how to contact the inspector.

- 1 (6) The power to enter premises under this section is additional to the  
2 powers under section 142 (General power to enter premises).

3 **152 Power to seize things**

- 4 (1) An inspector who enters premises under this chapter with the  
5 consent of a person in charge of the premises may seize anything at  
6 the premises if—
- 7 (a) the inspector is satisfied, on reasonable grounds, that the thing  
8 is connected with an offence against this Act; and
- 9 (b) seizure of the thing is consistent with the purpose of the entry  
10 told to the person when seeking the person's consent.
- 11 (2) An inspector who enters premises under a warrant issued under this  
12 chapter may seize anything at the premises that the inspector is  
13 authorised to seize under the warrant.
- 14 (3) An inspector who enters premises under this chapter (whether with  
15 the consent of a person in charge of the premises, under a warrant or  
16 otherwise) may seize anything at the premises if satisfied, on  
17 reasonable grounds, that—
- 18 (a) the thing is connected with an offence against this Act; and
- 19 (b) the seizure is necessary to prevent the thing from being—
- 20 (i) concealed, lost or destroyed; or
- 21 (ii) used to commit, continue or repeat the offence.
- 22 (4) Also, an inspector who enters premises under this chapter (whether  
23 with the consent of a person in charge of the premises, under a  
24 warrant or otherwise) may seize anything at the premises if satisfied,  
25 on reasonable grounds, that the thing poses a risk to the health or  
26 safety of people or of damage to property or the environment.

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- 1 (5) The powers of an inspector under subsections (3) and (4) are  
2 additional to any powers of the inspector under subsection (1) or (2)  
3 or any other Territory law.

4 **153 Action in relation to thing seized**

- 5 (1) This section applies if an inspector has seized a thing from premises  
6 (the *place of seizure*) under section 152.

- 7 (2) The inspector may—

- 8 (a) remove the thing from the place of seizure to another place; or  
9 (b) leave the thing at the place of seizure but restrict access to it; or  
10 (c) for a thing mentioned in section 154 (1)—destroy or otherwise  
11 dispose of the thing under section 154 (5) (Power to destroy  
12 unsafe things).

13 **Example of how access may be restricted**

14 The inspector may—

- 15 (a) place the seized thing in a room or other enclosed area, compartment or  
16 cabinet at the place of seizure; and  
17 (b) fasten and seal the door or opening providing access to the room, area,  
18 compartment or cabinet; and  
19 (c) mark the door or opening in a way that indicates that access to it has been  
20 restricted under this Act.

21 *Note* An example is part of the Act, is not exhaustive and may extend, but  
22 does not limit, the meaning of the provision in which it appears (see  
23 Legislation Act, s 126 and s 132).

- 24 (3) A person commits an offence if—

- 25 (a) the person interferes with a seized thing, or anything  
26 containing a seized thing, to which access has been restricted  
27 under subsection (2); and



1 (b) the person does not have an inspector's approval to interfere  
2 with the thing.

3 Maximum penalty: 100 penalty units.

4 (4) An offence against this section is a strict liability offence.

5 **154 Power to destroy unsafe things**

6 (1) This section applies to anything inspected or seized under this  
7 chapter by an inspector if the inspector is satisfied, on reasonable  
8 grounds, that the thing poses a risk to the health or safety of people  
9 or of damage to property or the environment.

10 (2) The inspector may require a person in charge of the premises where  
11 the thing is to destroy or otherwise dispose of the thing.

12 (3) The requirement may state 1 or more of the following:

13 (a) how the thing must be destroyed or otherwise disposed of;

14 (b) how the thing must be kept until it is destroyed or otherwise  
15 disposed of;

16 (c) the period within which the thing must be destroyed or  
17 otherwise disposed of.

18 (4) A person in charge of the premises where a thing is commits an  
19 offence if the person contravenes a requirement given to the person  
20 under subsection (2).

21 Maximum penalty: 100 penalty units.

22 (5) Alternatively, if the thing has been seized under this chapter, the  
23 inspector may destroy or otherwise dispose of the thing.

24 (6) Costs incurred by the Territory in relation to the disposal of a thing  
25 under subsection (5) are a debt owing to the Territory by, and are  
26 recoverable together and separately from, the following people:

27 (a) the person who owned the thing;

1 (b) each person in control of the premises where the thing was.

2 (7) An offence against this section is a strict liability offence.

3 **155 Power to require name and address**

4 (1) An inspector may require a person to state the person's name and  
5 home address if the inspector suspects, on reasonable grounds, that  
6 the person is committing, is about to commit, or has just committed,  
7 an offence against this Act.

8 *Note* A reference to an Act includes a reference to statutory instruments made  
9 or in force under the Act, including regulations and any law or  
10 instrument applied, adopted or incorporated by the Act (see Legislation  
11 Act, s 104).

12 (2) If an inspector makes a requirement of a person under  
13 subsection (1), the inspector must—

14 (a) tell the person the reasons for the requirement; and

15 (b) as soon as practicable, record the reasons.

16 (3) A person commits an offence if the person contravenes a  
17 requirement under subsection (1).

18 Maximum penalty: 100 penalty units.

19 (4) However, a person is not required to comply with a requirement  
20 under subsection (1) if, when asked by the person, the inspector  
21 does not produce his or her identity card for inspection by the  
22 person.

23 (5) Subsection (4) does not apply in relation to an inspector who is a  
24 police officer in uniform.

25 (6) An offence against this section is a strict liability offence.

26 (7) In this section:

27 *home address*, of a person, means the address of the place where the  
28 person usually lives.

1 **156 Inspector's power to require production of licence**

- 2 (1) This section applies if—
- 3 (a) an inspector suspects, on reasonable grounds, that the person is  
4 handling, is about to handle, or has just handled, a dangerous  
5 substance; and
- 6 (b) the regulations require the handling to be authorised under a  
7 licence.
- 8 (2) The inspector may require the person to produce for inspection any  
9 licence that authorises the person to handle the dangerous substance.
- 10 (3) If an inspector makes a requirement of a person under  
11 subsection (2), the inspector must—
- 12 (a) tell the person the reasons for the requirement; and  
13 (b) as soon as practicable, record the reasons.
- 14 (4) A person commits an offence if the person contravenes a  
15 requirement under subsection (2).
- 16 Maximum penalty: 5 penalty units.
- 17 (5) However, a person is not required to comply with a requirement  
18 under subsection (2) if, when asked by the person, the inspector  
19 does not produce his or her identity card for inspection by the  
20 person.
- 21 (6) Subsection (5) does not apply in relation to an inspector who is a  
22 police officer in uniform.
- 23 (7) An offence against this section is a strict liability offence.
- 24 (8) In this section:
- 25 *licence* includes an authority (however described) issued under a  
26 corresponding law that, under the regulations, authorises a person to  
27 handle a dangerous substance.

1 **Part 7.3** **Search warrants**

2 **157 Warrants generally**

3 (1) An inspector may apply to a magistrate for a warrant to enter  
4 premises.

5 (2) The application must be sworn and state the grounds on which the  
6 warrant is sought.

7 (3) The magistrate may refuse to consider the application until the  
8 inspector gives the magistrate all the information the magistrate  
9 requires about the application in the way the magistrate requires.

10 (4) The magistrate may issue a warrant only if satisfied there are  
11 reasonable grounds for suspecting—

12 (a) there is a particular thing or activity connected with an offence  
13 against this Act; and

14 (b) the thing or activity is, or is being engaged in, at the premises,  
15 or may be, or may be engaged in, at the premises within the  
16 next 14 days.

17 *Note* *At* premises includes in or on the premises (see dict).

18 (5) The warrant must state—

19 (a) that an inspector may, with any necessary assistance and force,  
20 enter the premises and exercise the inspector's powers under  
21 this chapter; and

22 (b) the offence for which the warrant is sought; and

23 (c) the things that may be seized under the warrant; and

24 (d) the hours when the premises may be entered; and

1 (e) the date, within 14 days after the day of the warrant's issue,  
2 that the warrant ends.

3 (6) In this section:

4 ***connected***—an activity is ***connected*** with an offence if—

5 (a) the offence has been committed by engaging or not engaging in  
6 it; or

7 (b) it will provide evidence of the commission of the offence.

8 *Note* For the meaning of thing ***connected*** with an offence, see s 141.

9 **158 Warrants—application made other than in person**

10 (1) An inspector may apply for a warrant by phone, fax, radio or other  
11 form of communication if the inspector considers it necessary  
12 because of—

13 (a) urgent circumstances; or

14 (b) other special circumstances.

15 (2) Before applying for the warrant, the inspector must prepare an  
16 application stating the grounds on which the warrant is sought.

17 (3) The inspector may apply for the warrant before the application is  
18 sworn.

19 (4) After issuing the warrant, the magistrate must immediately fax a  
20 copy to the inspector if it is practicable to do so.

21 (5) If it is not practicable to fax a copy to the inspector—

22 (a) the magistrate must—

23 (i) tell the inspector what the terms of the warrant are; and

24 (ii) tell the inspector the date and time the warrant was  
25 issued; and

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- 1           (b) the inspector must complete a form of warrant (*warrant form*)  
2           and write on it—
- 3                 (i) the magistrate's name; and  
4                 (ii) the date and time the magistrate issued the warrant; and  
5                 (iii) the warrant's terms.
- 6       (6) The faxed copy of the warrant, or the warrant form properly  
7       completed by the inspector, authorises the entry and exercise of the  
8       inspector's powers under this chapter.
- 9       (7) The inspector must, at the first reasonable opportunity, send to the  
10       magistrate—
- 11           (a) the sworn application; and  
12           (b) if the inspector completed a warrant form—the completed  
13           warrant form.
- 14       (8) On receiving the documents, the magistrate must attach them to the  
15       warrant.
- 16       (9) A court must find that a power exercised by an inspector was not  
17       authorised by a warrant under this section if—
- 18           (a) the question arises in a proceeding before the court whether the  
19           exercise of power was authorised by a warrant; and  
20           (b) the warrant is not produced in evidence; and  
21           (c) it is not proved that the exercise of power was authorised by a  
22           warrant under this section.

1 **159 Search warrants—announcement before entry**

2 (1) An inspector must, before anyone enters premises under a search  
3 warrant—

4 (a) announce that the inspector is authorised to enter the premises;  
5 and

6 (b) give anyone at the premises an opportunity to allow entry to  
7 the premises; and

8 (c) if a person in charge of the premises, or someone else who  
9 apparently represents the person, is present at the premises—  
10 identify himself or herself to the person.

11 (2) The inspector is not required to comply with subsection (1) if the  
12 inspector believes, on reasonable grounds, that immediate entry to  
13 the premises is required to ensure—

14 (a) the safety of anyone (including the inspector or any person  
15 assisting); or

16 (b) that the effective execution of the warrant is not frustrated.

17 **160 Details of search warrant to be given to person in charge**  
18 **etc**

19 If a person in charge of the premises, or someone else who  
20 apparently represents the person, is present at the premises while a  
21 search warrant is being executed, the inspector or a person assisting  
22 must make available to the person—

23 (a) a copy of the warrant; and

24 (b) a document setting out the rights and obligations of the person.

1 **161 Person in charge entitled to be present during search etc**

- 2 (1) If a person in charge of premises, or someone else who apparently  
3 represents the person, is present at the premises while a search  
4 warrant is being executed, the person in charge or the other person is  
5 entitled to observe the search being conducted.
- 6 (2) However, the person is not entitled to observe the search if—
- 7 (a) to do so would impede the search; or
- 8 (b) the person is under arrest, and allowing the person to observe  
9 the search being conducted would interfere with the objectives  
10 of the search.
- 11 (3) This section does not prevent 2 or more areas of the premises being  
12 searched at the same time.

13 **162 Moving things to another place for examination or**  
14 **processing**

- 15 (1) A thing found at premises entered under a search warrant may be  
16 moved to another place for examination or processing to decide  
17 whether it may be seized under the warrant if—
- 18 (a) both of the following apply:
- 19 (i) there are reasonable grounds for believing that the thing  
20 is or contains something to which the warrant relates;
- 21 (ii) it is significantly more practicable to do so having regard  
22 to the timeliness and cost of examining or processing the  
23 thing at another place and the availability of expert  
24 assistance; or
- 25 (b) a person in charge of the premises agrees in writing.
- 26 (2) The thing may be moved to another place for examination or  
27 processing for no longer than 72 hours.



- 1 (3) An inspector may apply to a magistrate for an extension of time if  
2 the inspector believes, on reasonable grounds, that the thing cannot  
3 be examined or processed within 72 hours.
- 4 (4) The inspector must give notice of the application to a person in  
5 charge of the premises, and the person is entitled to be heard on the  
6 application.
- 7 (5) If a thing is moved to another place under this section, the inspector  
8 must, if practicable—
- 9 (a) tell a person in charge of the premises the address of the place  
10 where, and time when, the examination or processing will be  
11 carried out; and
- 12 (b) allow the person or the person's representative to be present  
13 during the examination or processing.
- 14 (6) The provisions of this chapter relating to the issue of search  
15 warrants apply, with any necessary changes, to the giving of an  
16 extension under this section.

17 **163 Use of electronic equipment at premises**

- 18 (1) An inspector or a person assisting may operate electronic equipment  
19 at premises entered under a search warrant to access data (including  
20 data not held at the premises) if the inspector or person believes, on  
21 reasonable grounds, that—
- 22 (a) the data might be something to which the warrant relates; and  
23 (b) the equipment can be operated without damaging the data.
- 24 (2) If the inspector or person assisting believes, on reasonable grounds,  
25 that any data accessed by operating the electronic equipment might  
26 be something to which the warrant relates, the inspector or person  
27 may—

- 1            (a) copy the data to a data storage device brought to the premises;  
2            or
- 3            (b) if a person in charge of the premises agrees in writing—copy  
4            the data to a data storage device at the premises.
- 5            (3) The inspector or person assisting may take the device from the  
6            premises.
- 7            (4) The inspector or person assisting may do the following things if the  
8            inspector or person finds that anything to which the warrant relates  
9            (the *material*) is accessible using the equipment:
- 10            (a) seize the equipment and any data storage device;
- 11            (b) if the material can, by using facilities at the premises, be put in  
12            documentary form—operate the facilities to put the material in  
13            that form and seize the documents produced.
- 14            (5) An inspector may seize equipment under subsection (4) (a) only if—
- 15            (a) it is not practicable to copy the data as mentioned in  
16            subsection (2) or to put the material in documentary form as  
17            mentioned in subsection (4) (b); or
- 18            (b) possession of the equipment by a person in charge of the  
19            premises or someone else could be an offence.

20            **164 Person with knowledge of computer or computer system**  
21            **to assist access etc**

- 22            (1) An inspector may apply to a magistrate for an order requiring a  
23            stated person to provide any information or assistance that is  
24            reasonably necessary to allow the inspector or a person assisting to  
25            do 1 or more of the following:
- 26            (a) access data held in or accessible from a computer that is at the  
27            premises;
- 28            (b) copy the data to a data storage device;

- 1 (c) convert the data into documentary form.
- 2 (2) The magistrate may make an order if satisfied that—
- 3 (a) there are reasonable grounds for suspecting that something to
- 4 which the warrant relates is accessible from the computer; and
- 5 (b) the stated person is—
- 6 (i) reasonably suspected of possessing, or having under the
- 7 person's control, something to which the warrant relates;
- 8 or
- 9 (ii) the owner or lessee of the computer; or
- 10 (iii) an employee or agent of the owner or lessee of the
- 11 computer; and
- 12 (c) the stated person has knowledge of—
- 13 (i) the computer or a computer network of which the
- 14 computer forms a part; or
- 15 (ii) measures applied to protect data held in or accessible
- 16 from the computer.
- 17 (3) A person commits an offence if a person contravenes an order under
- 18 this section.
- 19 Maximum penalty: 50 penalty units, imprisonment for 6 months or
- 20 both.
- 21 (4) The provisions of this chapter relating to the issue of search
- 22 warrants apply, with any necessary changes, to the making of an
- 23 order under this section.

- 1 **165 Securing electronic equipment**
- 2 (1) This section applies if the inspector or a person assisting believes,  
3 on reasonable grounds, that—
- 4 (a) something to which the warrant relates (the *material*) may be  
5 accessible by operating electronic equipment at the premises;  
6 and
- 7 (b) expert assistance is required to operate the equipment; and
- 8 (c) the material may be destroyed, altered or otherwise interfered  
9 with if the inspector or person does not take action.
- 10 (2) The inspector or person may do whatever is necessary to secure the  
11 equipment, whether by locking it up, placing a guard or otherwise.
- 12 (3) The inspector or a person assisting must give written notice to a  
13 person in charge of the premises of—
- 14 (a) the inspector's or person's intention to secure the equipment;  
15 and
- 16 (b) the fact that the equipment may be secured for up to 24 hours.
- 17 (4) The equipment may be secured until the earliest of the following  
18 events happens:
- 19 (a) the end of the 24-hour period;
- 20 (b) the equipment is operated by the expert.
- 21 (5) If the inspector or a person assisting believes on reasonable grounds  
22 that the expert assistance will not be available within the 24-hour  
23 period, the inspector or person may apply to a magistrate to extend  
24 the period.
- 25 (6) The inspector or a person assisting must tell a person in charge of  
26 the premises of the intention to apply for an extension, and the  
27 person is entitled to be heard on the application.

1 (7) The provisions of this chapter relating to the issue of search  
2 warrants apply, with any necessary changes, to the giving of an  
3 extension under this section.

4 **166 Copies of seized things to be provided**

5 (1) This section applies if—

6 (a) a person in charge of premises, or someone else who  
7 apparently represents the person, is present at the premises  
8 while a search warrant is executed; and

9 (b) the inspector seizes—

10 (i) a document, film, computer file or something else that  
11 can be readily copied; or

12 (ii) a data storage device containing information that can be  
13 readily copied.

14 (2) The person in charge or other person may ask the inspector to give  
15 the person a copy of the thing or information.

16 (3) The inspector must give the person the copy as soon as practicable  
17 after the seizure.

18 (4) However, the inspector is not required to give the copy if—

19 (a) the thing was seized under section 163 (Use of electronic  
20 equipment at premises); or

21 (b) possession of the thing or information by a person in charge of  
22 the premises or someone else would be an offence.

1 **Part 7.4** **Return and forfeiture of things**  
2 **seized**

3 **167 Receipt for things seized**

- 4 (1) As soon as practicable after a thing is seized by an inspector under  
5 this chapter, the inspector must give a receipt for it to the person  
6 from whom it was seized.
- 7 (2) If, for any reason, it is not practicable to comply with subsection (1),  
8 the inspector must leave the receipt, secured conspicuously, at the  
9 place of seizure under section 153 (1) (Action in relation to thing  
10 seized).
- 11 (3) A receipt under this section must include the following:
- 12 (a) a description of the thing seized;
- 13 (b) an explanation of why the thing was seized;
- 14 (c) an explanation of the person's right to apply to a court under  
15 section 170 for an order disallowing the seizure;
- 16 (d) if the thing is removed from the premises where it is seized—  
17 where the thing is to be taken to;
- 18 (e) the inspector's name, and how to contact the inspector.

19 **168 Access to things seized**

- 20 (1) This section applies to a document or anything else seized under this  
21 chapter.
- 22 (2) If asked by a person who would be entitled to inspect the thing if it  
23 were not seized under this chapter, an inspector must allow the  
24 person, at any reasonable time—

- 1 (a) for a document—to inspect it, take extracts from it or make  
2 copies of it; and
- 3 (b) for anything else—to inspect it.
- 4 (3) This section does not apply to—
- 5 (a) a thing seized under section 152 (4) (which is about the seizure  
6 of a thing that poses a risk to the health or safety of people or  
7 of damage to property or the environment); or
- 8 (b) a thing seized under section 163 (Use of electronic equipment  
9 at premises); or
- 10 (c) a thing or information if possession of it by the person  
11 otherwise entitled to inspect it would be an offence.

12 **169 Return of things seized**

- 13 (1) A thing seized under this chapter must be returned to its owner, or  
14 reasonable compensation must be paid to the owner by the Territory  
15 for the loss of the thing, if—
- 16 (a) an infringement notice for an offence connected with the thing  
17 is not served on the owner within 6 months after the day of the  
18 seizure and either—
- 19 (i) a prosecution for an offence connected with the thing is  
20 not begun within the 6-month period; or
- 21 (ii) a prosecution for an offence connected with the thing is  
22 begun within the 6-month period but the court does not  
23 find the offence proved; or
- 24 (b) an infringement notice for an offence connected with the thing  
25 is served on the owner within 6 months after the day of the  
26 seizure, the infringement notice is withdrawn and—
- 27 (i) a prosecution for an offence connected with the thing is  
28 not begun within 6 months after the day of the seizure; or

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- 1                   (ii) a prosecution for an offence connected with the thing is  
2                                begun within 6 months after the day of the seizure but the  
3                                court does not find the offence proved; or
- 4                   (c) an infringement notice for an offence connected with the thing  
5                                is served on the owner within 6 months after the day of the  
6                                seizure, liability for the offence is disputed in accordance with  
7                                the *Magistrates Court Act 1930*, section 132 (Disputing  
8                                liability for infringement notice offence) and—
- 9                                (i) an infringement notice is not laid in the Magistrates Court  
10                                against the person for the offence within 60 days after the  
11                                day notice is given under section 132 that liability is  
12                                disputed; or
- 13                                (ii) the Magistrates Court does not find the offence proved;  
14                                or
- 15                   (d) before the thing is forfeited to the Territory under section 173  
16                                (Forfeiture of seized things), the chief executive—
- 17                                (i) becomes satisfied that there has been no offence against  
18                                this Act with which the thing was connected; or
- 19                                (ii) decides not to prosecute or serve an infringement notice  
20                                for the offence.
- 21                   (2) However, this section does not apply—
- 22                                (a) to a thing seized under section 152 (4) (which is about the  
23                                seizure of things that pose a risk to the health or safety of  
24                                people or of damage to property or the environment)); or
- 25                                (b) to a thing if the chief executive believes, on reasonable  
26                                grounds, that the only practical use of the thing in relation to  
27                                the premises where it was seized would be an offence against  
28                                this Act; or
- 29                                (c) to a thing if possession of it by its owner would be an offence.



1 **170 Application for order disallowing seizure**

- 2 (1) A person claiming to be entitled to anything seized under this  
3 chapter may apply to the Magistrates Court within 10 days after the  
4 day of the seizure for an order disallowing the seizure.
- 5 (2) However, this section does not apply to a thing seized under  
6 section 152 (4) (which is about the seizure of things that pose a risk  
7 to the health or safety of people or of damage to property or the  
8 environment)).
- 9 (3) The application may be heard only if the applicant has served a copy  
10 of the application on the chief executive.
- 11 (4) The chief executive is entitled to appear as respondent at the hearing  
12 of the application.

13 **171 Order for return of seized thing**

- 14 (1) This section applies if a person claiming to be entitled to anything  
15 seized under this chapter applies to the Magistrates Court under  
16 section 170 for an order disallowing the seizure.
- 17 (2) The Magistrates Court must make an order disallowing the seizure if  
18 the court is satisfied that—
- 19 (a) the applicant would, apart from the seizure, be entitled to the  
20 return of the seized thing; and
- 21 (b) the thing is not connected with an offence against this Act; and
- 22 (c) possession of the thing by the person would not be an offence.
- 23 (3) The Magistrates Court may also make an order disallowing the  
24 seizure if satisfied there are exceptional circumstances justifying the  
25 making of the order.

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- 1 (4) If the Magistrates Court makes an order disallowing the seizure, the  
2 court may make 1 or more of the following ancillary orders:
- 3 (a) an order directing the chief executive to return the thing to the  
4 applicant or to someone else that appears to be entitled to it;
- 5 (b) if the thing cannot be returned or has depreciated in value  
6 because of the seizure—an order directing the Territory to pay  
7 reasonable compensation;
- 8 (c) an order about the payment of costs in relation to the  
9 application.

10 **172 Adjourment pending hearing of other proceedings**

- 11 (1) This section applies to the hearing of an application under  
12 section 170 (Application for order disallowing seizure).
- 13 (2) If it appears to the Magistrates Court that the seized thing is required  
14 to be produced in evidence in a pending proceeding in relation to an  
15 offence against a Territory law, the court may, on the application of  
16 the chief executive or its own initiative, adjourn the hearing until the  
17 end of that proceeding.

18 **173 Forfeiture of seized things**

- 19 (1) This section applies if—
- 20 (a) anything seized under this chapter has not been destroyed or  
21 otherwise disposed of under section 154 (Power to destroy  
22 unsafe things) or returned under section 169 (Return of things  
23 seized); and
- 24 (b) an application for disallowance of the seizure under  
25 section 170 (Application for order disallowing seizure)—
- 26 (i) has not been made within 10 days after the day of the  
27 seizure; or

1 (ii) has been made within that period, but the application has  
2 been refused or has been withdrawn before a decision in  
3 relation to the application had been made.

4 (2) If this section applies to the seized thing—

5 (a) it is forfeited to the Territory; and

6 (b) it may be sold, destroyed or otherwise disposed of as the chief  
7 executive directs.

#### 8 **174 Return of forfeited things**

9 (1) This section applies to something forfeited under section 173 that  
10 has not been disposed of in a way that would prevent its return.

11 (2) If the chief executive becomes satisfied that there has been no  
12 offence against this Act with which the thing was connected, the  
13 chief executive must, as soon as practicable, return the thing to the  
14 person from whom it was seized or someone else who appears to the  
15 chief executive to be entitled to it.

16 (3) On its return, any proprietary and other interests in the thing that  
17 existed immediately before its forfeiture are restored.

#### 18 **175 Cost of disposal of things forfeited**

19 (1) This section applies if—

20 (a) a person is convicted, or found guilty, of an offence against  
21 this Act in relation to something forfeited to the Territory  
22 under this chapter; and

23 (b) the thing was connected with an offence against this Act; and

24 (c) the person was the owner of the thing immediately before its  
25 forfeiture.

26 *Note* For the meaning of *found guilty*, see Legislation Act, dict, pt 1.

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**Part 7.4** Return and forfeiture of things seized

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- 1 (2) If this section applies, costs incurred by or on behalf of the Territory  
2 in relation to the lawful disposal of the thing (including storage  
3 costs) are a debt owing to the Territory by the person.

1 **Part 7.5** **Other enforcement provisions**

2 **176 Damage etc to be minimised**

- 3 (1) In the exercise, or purported exercise, of a function under this  
4 chapter, an inspector must take all reasonable steps to ensure that  
5 the inspector, and any person assisting, causes as little  
6 inconvenience, detriment and damage as is practicable.
- 7 (2) If an inspector, or a person assisting, damages anything in the  
8 exercise or purported exercise of a function under this chapter, the  
9 inspector must give written notice of particulars of the damage to  
10 the person whom the inspector believes, on reasonable grounds, is  
11 the owner of the thing.
- 12 (3) If the damage happens at premises entered under this chapter in the  
13 absence of a person in charge of the premises, the notice may be  
14 given by leaving it secured in a conspicuous place at the premises.

15 **177 Compensation to be paid in certain circumstances**

- 16 (1) A person may claim compensation from the Territory if the person  
17 suffers loss or expense because of the exercise, or purported  
18 exercise, of a function under this chapter by an inspector or person  
19 assisting.
- 20 (2) Compensation may be claimed and ordered in a proceeding for—
- 21 (a) compensation brought in a court of competent jurisdiction; or
- 22 (b) an order under section 170 (Application for order disallowing  
23 seizure); or
- 24 (c) an offence against this Act brought against the person making  
25 the claim for compensation.

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- 1        (3) A court may order the payment of reasonable compensation for the  
2            loss or expense only if it is satisfied it is just to make the order in the  
3            circumstances of the particular case.
- 4        (4) The regulations may prescribe matters that may, must or must not be  
5            taken into account by the court in considering whether it is just to  
6            make the order.

## 1 Chapter 8 Emergency powers

### 2 178 Meaning of *recall order* for ch 8

3 In this chapter:

4 *recall order* means an emergency order requiring the recall or  
5 disposal, or both, of a dangerous substance.

### 6 179 Emergency orders

7 The Minister may, in writing, make an order (an *emergency order*)  
8 if the Minister believes, on reasonable grounds, that the order is  
9 necessary to prevent or minimise a risk of serious harm to the health  
10 or safety of people, or substantial damage to property or the  
11 environment, from a hazard associated with a dangerous substance.

12 *Note 1* An order may be made in relation to a particular kind of dangerous  
13 substance (see Legislation Act, s 48).

14 *Note 2* The power to make an instrument includes the power to amend or repeal  
15 the instrument (see Legislation Act, s 46).

### 16 180 Nature of emergency orders

17 An emergency order in relation to a dangerous substance may do  
18 1 or more of the following:

- 19 (a) require the publication of warnings, in a form approved by the  
20 Minister, that the substance is unsafe;
- 21 (b) prohibit the handling of the substance or particular kinds of  
22 handling of the substance, including, for example, the sale of  
23 the substance;
- 24 (c) prohibit the advertising of the substance;

- 1            (d) require the recall of the substance if it has been consigned or  
2            distributed for sale or sold and state how, and the period within  
3            which, the recall is to be conducted;
- 4            (e) require the destruction or other disposal of the substance, and  
5            state how the disposal is to be done;
- 6            (f) prohibit absolutely the carrying on of an activity in relation to  
7            the substance, or permit the carrying on of the activity only in  
8            accordance with conditions stated in the order;
- 9            (g) require the taking and analysis of samples of the substance or  
10           of water, soil or anything else that is part of the environment  
11           where the activity is or has been engaged in in relation to the  
12           substance;
- 13           (h) require that stated methods be used for analysis of any samples  
14           required to be taken in accordance with the order.

15           *Note*      An example is part of the Act, is not exhaustive and may extend, but  
16           does not limit, the meaning of the provision in which it appears (see  
17           Legislation Act, s 126 and s 132).

18           **181    Special provisions for recall orders**

- 19           (1) A recall order in relation to a dangerous substance may require a  
20           person bound by the order to tell the public (or a stated part of the  
21           public), in a stated way, 1 or more of the following:
- 22           (a) the substance to be recalled or disposed of;
- 23           (b) the reasons why the substance is considered to be a hazard;
- 24           (c) the circumstances in which the substance may cause a risk;
- 25           (d) procedures for disposing of the substance.
- 26           (2) A person who is required by a recall order to recall a dangerous  
27           substance must give written notice to the chief executive of the  
28           completion of the recall as soon as practicable after its completion.



1 (3) A person bound by a recall order is liable to the Territory for any  
2 costs incurred by the Territory in relation to the recall order.

3 *Note* The costs may be recovered in a court of competent jurisdiction (see  
4 Legislation Act, s 177).

5 (4) In a proceeding for the recovery of any costs, a certificate signed by  
6 the chief executive stating the amount of the costs, and how they  
7 were incurred, is evidence of the matters stated in the certificate.

## 8 **182 How emergency orders are made**

9 (1) An emergency order may be addressed to—

10 (a) a person or 2 or more people; or

11 (b) a class of people or the general public.

12 (2) A copy of an emergency order mentioned in subsection (1) (a) must  
13 be served on the person or people to whom it is addressed.

14 *Note* For how documents may be served, see Legislation Act, pt 19.5.

15 (3) Notice of an emergency order mentioned in subsection (1) (b) must  
16 be published as soon as practicable after the order is made in a  
17 newspaper that, in the Minister's opinion, will be most likely to  
18 bring the order to the attention of the people to be bound by it.

19 (4) The notice must set out the terms of the order and the people to be  
20 bound by it.

21 (5) An emergency order, when it takes effect, is binding on the person  
22 or people to whom it is addressed.

23 (6) An emergency order that is served on a person takes effect in  
24 relation to the person when it is served on the person.

25 (7) An emergency order that is published under subsection (3) takes  
26 effect on the day after the day the order's 1st published under that  
27 subsection.

1        (8) An order ends at the end of 90 days after the day it takes effect  
2            unless it is sooner revoked.

3        (9) Subsection (8) does not prevent a further order being made in the  
4            same terms as an order that has ended.

5        **183 Stay or variation of emergency orders by Supreme Court**

6        (1) A person bound by an emergency order may apply to the Supreme  
7            Court for an order staying or otherwise affecting the operation of the  
8            order.

9        (2) The Supreme Court may make an order staying or otherwise  
10            affecting the operation of an emergency order only if satisfied that  
11            the making of the order will not—

12            (a) create or significantly increase the possibility of a risk of  
13                serious harm to the health or safety of people, or substantial  
14                damage to property or the environment, from a hazard  
15                associated with a dangerous substance; or

16            (b) aggravate significantly the harm to the health or safety of  
17                people, or damage to property or the environment, from a  
18                substantial hazard associated with a dangerous substance.

19        (3) In deciding whether to make an order under this section, the  
20            Supreme Court must have regard to section 185 (Compensation for  
21            emergency order).

22        **184 Failure to comply with emergency order**

23        (1) A person commits an offence if—

24            (a) the person contravenes a prohibition imposed on the person by  
25                an emergency order; or

1 (b) the person fails to take all reasonable steps to comply with a  
2 direction given by an emergency order.

3 Maximum penalty: 500 penalty units.

4 (2) In this section:

5 *emergency order* includes an emergency order as affected by any  
6 order of the Supreme Court under section 183.

### 7 **185 Compensation for emergency order**

8 (1) This section applies if—

9 (a) an emergency order has been made that binds, or has bound, a  
10 person; and

11 (b) the person suffers loss or damage because of the making of the  
12 order; and

13 (c) the person considers that there were insufficient grounds to  
14 make the order.

15 (2) The person may apply, in writing, to the Minister for compensation.

16 (3) The application must state the reasons why the person considers that  
17 there were insufficient grounds to make the emergency order.

18 (4) If, after considering the application, the Minister is satisfied that  
19 there were insufficient grounds to make the emergency order, the  
20 Territory must pay the person the reasonable compensation decided  
21 by the Minister.

22 (5) However, compensation is not payable to the person—

23 (a) in relation to any loss or damage suffered by the person  
24 because of an act or omission of the person; or

25 (b) if the person caused or contributed to the relevant risk or harm  
26 to the health or safety of people or of damage to property or the  
27 environment.

**Chapter 8**      Emergency powers

Section 185

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- 1      (6) The Minister must give the person written notice of the Minister's  
2      decision on the application.
- 3      (7) If the Minister does not decide the application within 28 days after  
4      the day the Minister receives the application, the Minister is taken to  
5      have refused to pay compensation.

1 **Chapter 9**                    **Administrative review of**  
2    **decisions**

3 **186 Application of ch 9**

4 This chapter applies to a decision (a *reviewable decision*)—

- 5 (a) made by the Minister, chief executive or an inspector under  
6 this Act; and  
7 (b) prescribed under the regulations for this section.

8 **187 Notice of reviewable decisions**

9 (1) If the Minister, chief executive or inspector (the *decision-maker*)  
10 makes a reviewable decision, the decision-maker must give written  
11 notice of the decision to each person prescribed under the  
12 regulations for the decision.

13 (2) The notice must comply with the requirements of the code of  
14 practice in force under the *Administrative Appeals Tribunal Act*  
15 *1989*, section 25B (1).

16 (3) In particular, the notice must tell the person—

- 17 (a) whether the person has the right to apply for internal review of  
18 the decision or the right to apply to the administrative appeals  
19 tribunal for review of the decision, and how the application  
20 must be made; and  
21 (b) if the person has the right to apply for internal review of the  
22 decision—that person has the right to apply to the  
23 administrative appeals tribunal for review of the decision on  
24 the internal review if the person is dissatisfied with that  
25 decision; and

- 1 (c) about the options available under other ACT laws to have the  
2 decision reviewed by a court or the ombudsman.

### 3 **188 Internal review of certain decisions**

- 4 (1) This section applies if the regulations declare that a reviewable  
5 decision is a decision that is subject to internal review (an *internally*  
6 *reviewable decision*).
- 7 (2) A person whose interests are affected by an internally reviewable  
8 decision may apply in writing to the chief executive for internal  
9 review of the decision.
- 10 (3) The chief executive must arrange for someone else (the *internal*  
11 *reviewer*) to review the decision.
- 12 (4) However, this section does not apply to a reviewable decision made  
13 personally by the Minister or the chief executive.

14 *Note* Section 191 (b) provides for AAT review of decisions exempt from  
15 internal review.

### 16 **189 Applications for internal review**

- 17 (1) An application for internal review of an internally reviewable  
18 decision must be made within—
- 19 (a) 28 days after the day when the applicant is told about the  
20 decision by the decision-maker; or
- 21 (b) any longer period allowed by the internal reviewer, whether  
22 before or after the end of the 28-day period.
- 23 (2) The application must set out the grounds on which internal review  
24 of the decision is sought.
- 25 (3) The making of the application for internal review of the decision  
26 does not affect the operation of the decision.

1 **190 Internal review**

2 (1) The internal reviewer must review the internally reviewable  
3 decision, and confirm, vary or revoke the decision, within 5 business  
4 days after the decision-maker receives the application for internal  
5 review of the decision.

6 *Note* For the meaning of *business day*, see Legislation Act, dict, pt 1.

7 (2) If the decision is not varied or revoked within the 5-day period, the  
8 decision is taken to have been confirmed by the internal reviewer.

9 (3) As soon as practicable after reviewing the decision, the internal  
10 reviewer must give written notice of the decision on the internal  
11 review to the applicant.

12 (4) The notice must be in accordance with the requirements of the code  
13 of practice in force under the *Administrative Appeals Tribunal*  
14 *Act 1989*, section 25B (1).

15 **191 Review of decisions by administrative appeals tribunal**

16 A person may apply to the administrative appeals tribunal for  
17 review of—

18 (a) a decision made by an internal reviewer; or

19 (b) a reviewable decision, other than an internally reviewable  
20 decision.

1     **Chapter 10**            **Procedural and evidentiary**  
2                                    **provisions**

3     **Part 10.1**            **General provisions about**  
4                                    **offences against Act**

5     **192 Acts and omissions of representatives**

6         (1) In this section:

7             *person* means an individual.

8             *representative*, of a person, means an employee or agent of the  
9             person.

10            *state of mind*, of a person, includes—

11            (a) the person’s knowledge, intention, opinion, belief or purpose;  
12                and

13            (b) the person’s reasons for the intention, opinion, belief or  
14                purpose.

15         (2) This section applies to a prosecution for any offence against this  
16             Act.

17         (3) If it is relevant to prove a person’s state of mind about an act or  
18             omission, it is enough to show—

19             (a) the act was done or omission made by a representative of the  
20                person within the scope of the representative’s actual or  
21                apparent authority; and

22             (b) the representative had the state of mind.



- 1 (4) An act done or omitted to be done on behalf of a person by the  
2 person's representative within the scope of the representative's  
3 actual or apparent authority is also taken to have been done or  
4 omitted to be done by the person.
- 5 (5) However, subsection (4) does not apply if the person establishes that  
6 reasonable precautions were taken and appropriate diligence was  
7 exercised to avoid the act or omission.
- 8 (6) A person who is convicted of an offence cannot be punished by  
9 imprisonment for the offence if the person would not have been  
10 convicted of the offence without subsection (3) or (4).

11 **193 Criminal liability of corporation officers**

- 12 (1) This section applies to the following provisions:
- 13 (a) a provision mentioned in section 41 (Meaning of *safety duty*  
14 for pt 3.2);
- 15 (b) a provision of part 4.3 (Offences relating to licences);
- 16 (c) a provision of chapter 5 (Other serious offences);
- 17 (d) section 107 (Contravention of improvement notices);
- 18 (e) section 119 (Contravention of prohibition notices);
- 19 (f) section 128 (Contravention of enforceable undertakings).
- 20 (2) An officer of a corporation commits an offence if—
- 21 (a) the corporation contravenes a provision to which this section  
22 applies; and
- 23 (b) the contravention is an offence against this Act (the *relevant*  
24 *offence*); and
- 25 (c) the officer was reckless about whether the contravention would  
26 happen; and

- 1 (d) the officer was in a position to influence the conduct of the  
2 corporation in relation to the contravention; and
- 3 (e) the officer failed to take all reasonable steps to prevent the  
4 contravention.
- 5 Maximum penalty: The maximum penalty that may be imposed for  
6 the commission of the relevant offence by an individual.
- 7 (3) This section applies whether or not the corporation is prosecuted for,  
8 or convicted of, the relevant offence.
- 9 (4) In deciding whether the executive officer took (or failed to take)  
10 reasonable steps to prevent the contravention, a court must have  
11 regard to the following:
- 12 (a) any action the officer took directed towards ensuring the  
13 following (to the extent that the action is relevant to the act or  
14 omission):
- 15 (i) that the corporation arranged regular professional  
16 assessments of the corporation's compliance with the  
17 contravened provision;
- 18 (ii) that the corporation implemented any appropriate  
19 recommendation arising from such an assessment;
- 20 (iii) that the corporation's employees, agents and contractors  
21 had a reasonable knowledge and understanding of the  
22 requirement to comply with the contravened provision;
- 23 (b) any action the officer took when the officer became aware that  
24 the contravention was, or might be, about to happen.
- 25 (5) Subsection (4) does not limit the matters to which the court may  
26 have regard.
- 27 (6) This section does not apply if the corporation would have a defence  
28 to a prosecution for the relevant offence.

1 **194 No defence to claim deterioration of sample**

2 It is not a defence in a proceeding for an offence against this Act for  
3 a defendant to claim that any part of a sample kept for future  
4 comparison with a sample that has been analysed has, from natural  
5 causes, deteriorated, perished or undergone material change.

6 **195 Remedial orders by courts for offences**

7 (1) This section applies if—

8 (a) a person is convicted, or found guilty, of an offence against  
9 this Act; and

10 (b) the prosecutor asks the court to make an order under this  
11 section; and

12 (c) it appears to the court that the person could partly or  
13 completely rectify a state of affairs that arose as a direct or  
14 indirect result of the conduct that was the subject of the  
15 offence.

16 *Note* For the meaning of *found guilty*, see Legislation Act, dict, pt 1.

17 (2) The court may order the person to take any steps that it considers are  
18 necessary and appropriate to rectify the state of affairs and that are  
19 within the person's power to take.

20 (3) If a court makes an order under this section, it may also make any  
21 other consequential orders (including orders about costs) that it  
22 considers appropriate.

23 **196 Court-directed publicity for offences**

24 If a person is convicted of an offence against this Act, the court may  
25 direct the person to publish a statement in accordance with the  
26 directions of the court in relation to the offence.

- 1 **197 Publication by chief executive of convictions etc**
- 2 (1) This section applies if a person, or a representative of the person, is
- 3 convicted or found guilty of an offence against this Act in relation to
- 4 a dangerous substance and—
- 5 (a) the time for making an appeal against the conviction, or
- 6 finding of guilt, ends without an application for an appeal
- 7 being made; or
- 8 (b) if an appeal is made against the conviction or finding of guilt—
- 9 (i) the conviction or finding is confirmed on appeal, and the
- 10 time for making any further appeal in relation to the
- 11 conviction or finding ends without an application for an
- 12 appeal being made; or
- 13 (ii) the appeal is withdrawn, struck out or discontinued or
- 14 lapses; or
- 15 (c) if a retrial has been ordered—the time for making an appeal on
- 16 the retrial ends in accordance with paragraph (a) or (b).
- 17 (2) The chief executive may publish the following information in
- 18 relation to the conviction or finding of guilt in a way that the chief
- 19 executive considers appropriate:
- 20 (a) particulars that allow the public to identify the person;
- 21 (b) details of the offence;
- 22 (c) the decision of the court and the penalty imposed on the person
- 23 or a representative of the person (including the forfeiture of
- 24 anything under this Act);

- 1 (d) any other information in relation to the offence and the safety  
2 of the dangerous substance that the chief executive considers  
3 appropriate to be published.

4 **Examples of publication**

- 5 1 a press release  
6 2 an article in a document published by the Territory or a Territory authority  
7 3 an advertisement in a newspaper circulating in the ACT

8 **Examples for par (a)**

- 9 1 the licensee's name and ACN (if any)  
10 2 any name (and, if relevant, ACN) used in the past by the licensee  
11 3 the licensee's current and previous business addresses

12 *Note 1* For the meaning of **found guilty**, see Legislation Act, dict, pt 1.

13 *Note 2* An example is part of the Act, is not exhaustive and may extend, but  
14 does not limit, the meaning of the provision in which it appears (see  
15 Legislation Act, s 126 and s 132).

16 (3) If the conviction or finding of guilty is quashed or set aside on  
17 appeal, the information must not be published.

18 (4) If the penalty is changed on appeal, this section applies in relation to  
19 the penalty as changed.

20 (5) For the *Civil Law (Wrongs) Act 2002*, section 128 (Publication of a  
21 proceeding of public concern), the information published by the  
22 chief executive under this section is taken to be a fair report of a  
23 proceeding of public concern.

24 (6) In this section:

25 **representative of the person** means—

26 (a) if the person is an individual—an employee or agent of the  
27 person; or

28 (b) if the person is a corporation—an employee, agent or executive  
29 officer of the person.

1 **198 Court may order costs and expenses**

2 (1) A court that hears a proceeding for an offence against this Act may  
3 make any order it considers appropriate in relation to costs and  
4 expenses in relation to the examination, seizure, detention, storage,  
5 analysis (including further analysis), destruction or other disposition  
6 of anything the subject of the proceeding.

7 (2) This section does not affect any other power of the court to award  
8 costs.

9 **199 Court may order forfeiture**

10 A court that convicts a person, or finds a person guilty, of an offence  
11 against this Act may order the forfeiture to the Territory of anything  
12 that was used in the commission of the offence.

13 **200 Notices of noncompliance by Territory entities**

14 (1) This section applies if a Territory entity (other than a Territory  
15 owned corporation) commits an offence against this Act and the  
16 offence is an infringement notice offence.

17 *Note 1* For the meaning of *Territory owned corporation*, see Legislation Act,  
18 dict, pt 1

19 *Note 2* A reference to an Act includes a reference to statutory instruments made  
20 or in force under the Act, including regulations and any law or  
21 instrument applied, adopted or incorporated by the Act (see Legislation  
22 Act, s 104).

23 (2) An authorised person for the infringement notice offence may serve  
24 a notice of noncompliance on the responsible chief executive for the  
25 Territory entity.

26 *Note* For how documents may be served, see Legislation Act, pt 19.5.

- 1 (3) The responsible chief executive must include in the chief  
2 executive's annual report a statement of the number of notices of  
3 noncompliance serviced on the chief executive and matter to which  
4 each notice related.
- 5 (4) In this section:
- 6 **annual report** means a report under the *Annual Reports*  
7 *(Government Agencies) Act 2004*.
- 8 **authorised person**, for an infringement notice offence, means an  
9 authorised person for the infringement notice offence under the  
10 *Magistrates Court Act 1930*,
- 11 **responsible chief executive**—see the *Auditor-General Act 1996*,  
12 dictionary.
- 13 **Territory entity** means an administrative unit or a Territory entity  
14 under the *Auditor-General Act 1996*.

1 **Part 10.2 Evidentiary provisions**

2 **201 Presumptions**

3 In a proceeding for an offence against this Act, it is presumed until  
4 the contrary is proved, on the balance of probabilities, that—

5 (a) a substance that is part of a batch, lot or consignment of the  
6 substance of the same kind or description is representative of  
7 all of the substance in the batch, lot or consignment; and

8 (b) each part of a sample of a substance divided for analysis for  
9 this Act is of uniform composition with every other part of the  
10 sample; and

11 (c) a person who sold a substance in the conduct of a business and  
12 was not the holder of a licence sold the substance as the  
13 employee of the licensee; and

14 (d) a person who appears from any marking or label on an article,  
15 container or package containing a substance for sale to have  
16 manufactured, imported, packed or supplied the substance is a  
17 person in control of the manufacture, import, packing or supply  
18 of the substance.

19 **202 Certificate evidence etc**

20 (1) This section applies in relation to a proceeding for an offence  
21 against this Act.

22 (2) A document that appears to be a copy of a licence, approval, notice,  
23 order, authority or undertaking under this Act is evidence of the  
24 issue or giving of a licence, approval, notice, order, authority or  
25 undertaking.



- 1 (3) A certificate that appears to be signed by or on behalf of the chief  
2 executive, and that states any of the following matters, is evidence  
3 of the matters:
- 4 (a) that there was, or was not, in force a licence, approval, notice,  
5 order, authority or undertaking in relation to a stated person or  
6 people or premises;
- 7 (b) that a licence, approval, notice, order, authority or undertaking  
8 authorised or required or did not authorise or require a stated  
9 activity at a particular time and place;
- 10 (c) that a licence, approval, notice, order, authority or undertaking  
11 was or was not subject to stated conditions;
- 12 (d) that a substance is or is not a dangerous substance;
- 13 (e) that a dangerous substance belongs to or does not belong to a  
14 particular class or category of dangerous substances;
- 15 (f) that an explosive is or is not a particular kind of explosive;
- 16 (g) the receipt or otherwise of a notice, application or payment;
- 17 (h) that an amount of fees or another amount is payable under this  
18 Act by a stated person.
- 19 (4) A certificate that appears to be signed by or on behalf of the chief  
20 executive, and states anything prescribed under the regulations for  
21 this section, is evidence of the thing.
- 22 (5) A certificate mentioned in subsection (3) or (4) may state anything  
23 by reference to a date or period.
- 24 (6) A court must accept a certificate or other document mentioned in  
25 this section as proof of the matters stated in it if there is no evidence  
26 to the contrary.

Section 203

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1 (7) In this section:

2 *authority* includes an appointment as an authorised analyst or  
3 inspector.

4 *notice* includes a compliance notice, improvement notice or  
5 prohibition notice.

6 *order* includes an emergency order (including a recall order).

7 *undertaking* means an enforceable undertaking under part 6.5.

8 **203 Evidence of analysts**

9 (1) A certificate of the results of an analysis is admissible in a  
10 proceeding for an offence against this Act, and is evidence of the  
11 facts stated in it, if a copy of the certificate is served by the party  
12 who obtained the analysis on the other party to the proceeding at  
13 least 14 days before the day of the hearing.

14 (2) However, a court may order, at the request of a party to the  
15 proceedings or on its own initiative, that the period mentioned in  
16 subsection (1) be reduced to the period stated in the court's order.

17 (3) An analyst who carried out an analysis in relation to which a  
18 certificate is produced as evidence in a proceeding for an offence  
19 against this Act need not be called as a witness in the proceeding by  
20 the party producing the certificate unless the court hearing the  
21 proceeding orders, at the request of a party to the proceedings or on  
22 its own initiative, that the analyst be called as a witness.

23 **204 Admissibility of analysis of sample taken by inspector**

24 The analysis of a sample of a substance taken by an inspector is  
25 admissible in evidence in a proceeding for an offence against this  
26 Act only if the sample was taken as required or allowed by part 6.7  
27 (Taking and analysis of samples).

1 **205 Power of court to order further analysis**

- 2 (1) This section applies if the court before which a person is being  
3 prosecuted for an offence against this Act is satisfied that there is a  
4 disagreement between the evidence of the analysts for the parties to  
5 the proceeding.
- 6 (2) The court may order that the part or parts of a sample kept under  
7 section 138 (Procedures for dividing samples) be sent by the chief  
8 executive to an independent analyst.
- 9 (3) For subsection (2), the order may require the sample to be sent to a  
10 particular analyst or to an analyst agreed to by the parties.
- 11 (4) An analyst who is sent a part or parts of a sample for analysis under  
12 this section must make the analysis for the information of the court.
- 13 (5) Subject to section 198 (Court may order costs and expenses), the  
14 cost of an analysis under this section is payable by the Territory.

1 **Chapter 11 Administration**

2 **206 Inspection of incorporated documents**

3 (1) This section applies to an incorporated document, or an amendment  
4 or replacement of an incorporated document.

5 *Note* For the meaning of *incorporated document*, see the dictionary.

6 (2) The chief executive must ensure that the document, amendment or  
7 replacement is made available for inspection free of charge to the  
8 public on business days at reasonable times at the office of an  
9 administrative unit administered by the chief executive.

10 (3) In this section:

11 *amendment*, of an incorporated document—see section 220 (6).

12 **207 Inspectors**

13 (1) Each of the following is an inspector for this Act:

14 (a) a police officer;

15 (b) a public servant appointed under subsection (2).

16 (2) The chief executive may appoint a public servant as an inspector for  
17 this Act.

18 *Note 1* For the making of appointments (including acting appointments), see  
19 Legislation Act, pt 19.3.

20 *Note 2* In particular, a person may be appointed for a particular provision of a  
21 law (see Legislation Act, s 7 (3)) and an appointment may be made by  
22 naming a person or nominating the occupant of a position (see s 207).

1 **208 Identity cards**

2 (1) This section applies only to an inspector appointed under  
3 section 207 (2).

4 (2) The chief executive must give each inspector an identity card that  
5 states the person's name and appointment as an inspector, and  
6 shows—

7 (a) a recent photograph of the person; and

8 (b) the date of issue of the card; and

9 (c) the date of expiry of the card; and

10 (d) anything else prescribed under the regulations.

11 (3) A person commits an offence if—

12 (a) the person ceases to be an inspector; and

13 (b) the person does not return the person's identity card to the  
14 chief executive as soon as practicable (but within 7 days) after  
15 the day the person ceases to be an inspector.

16 Maximum penalty: 1 penalty unit.

17 (4) An offence against this section is a strict liability offence.

18 **209 Functions of inspectors**

19 The functions of an inspector under this Act include the following:

20 (a) to inspect and monitor the handling of dangerous substances  
21 and premises, plant and systems for handling dangerous  
22 substances;

23 (b) to investigate compliance with this Act and incidents adversely  
24 affecting the safe handling of a dangerous substance.

1 **210 Appointment of authorised analysts**

2 The chief executive may appoint a person as an authorised analyst  
3 for this Act.

4 *Note 1* For the making of appointments (including acting appointments), see  
5 Legislation Act, pt 19.3.

6 *Note 2* In particular, a person may be appointed for a particular provision of a  
7 law (see Legislation Act, s 7 (3)) and an appointment may be made by  
8 naming a person or nominating the occupant of a position (see s 207).

9 **211 Secrecy**

10 (1) In this section:

11 *court* includes a tribunal or other entity with power to require the  
12 production of documents or the answering of questions.

13 *person to whom this section applies* means—

- 14 (a) a person who is or has been an inspector; or  
15 (b) anyone else who has exercised a function under this Act.

16 *produce* includes allow access to.

17 *protected information* means information obtained under this Act in  
18 relation to manufacturing secrets or commercial secrets, working  
19 processes or anything else prescribed under the regulations.

20 (2) A person commits an offence if—

- 21 (a) the person is a person to whom this section applies; and  
22 (b) the person—  
23 (i) makes a record of protected information; or  
24 (ii) directly or indirectly, divulges or communicates protected  
25 information to a person; and

1 (c) the record is not made, or the information is not divulged or  
2 communicated, in relation to the exercise of a function, as a  
3 person to whom this section applies, under this Act or another  
4 Territory law.

5 Maximum penalty: 50 penalty units, imprisonment for 6 months or  
6 both.

7 (3) Subsection (2) does not prevent a person to whom this section  
8 applies from divulging or communicating protected information—

9 (a) with the consent of the person from whom the information was  
10 obtained; or

11 (b) to a person administering or enforcing a corresponding law; or

12 (c) to a law enforcement authority.

### 13 **212 Protection from liability**

14 (1) In this section:

15 *official* means—

16 (a) the Minister; or

17 (b) the chief executive; or

18 (c) an inspector; or

19 (d) anyone else exercising functions under this Act.

20 (2) An official does not incur civil liability for an act or omission done  
21 honestly and without negligence for this Act.

22 (3) Any civil liability that would, apart from this section, attach to an  
23 official attaches instead to the Territory.

1 **Chapter 12 Regulations about**  
2 **dangerous substances**

3 **213 Regulations may apply etc instruments**

4 The regulations may apply, adopt or incorporate an instrument, as in  
5 force from time to time.

6 *Note 1* The text of an applied, adopted or incorporated instrument, whether  
7 applied as in force from time to time or as at a particular time, is taken  
8 to be a notifiable instrument if the operation of the Legislation Act,  
9 s 47 (5) or (6) is not disapplied (see s 47 (7)).

10 *Note 2* A notifiable instrument must be notified under the Legislation Act.

11 **214 Scheme for explosives to be prescribed**

12 (1) The regulations are to provide a scheme for regulating the handling  
13 of explosives.

14 (2) However, subsection (1) does not require all aspects of the handling  
15 of all explosives to be licensed.

16 **Example**

17 a person selling or possessing a distress flare may not be required under the  
18 regulations to hold a licence to sell or possess the flare

19 *Note* An example is part of this Act, is not exhaustive and may extend, but  
20 does not limit, the meaning of the provision in which it appears (see  
21 Legislation Act, s 126 and s 132).

22 (3) The regulations may make provision in relation to explosives,  
23 including, for example—

24 (a) the explosives that may or must not be handled, including—

25 (i) the authorisation, control and prohibition of explosives  
26 for this Act; and



- 1                   (ii) the composition, testing and classification of explosives;  
2                   and
- 3           (b) the kinds of handling of explosives that must be authorised by  
4           a licence or under the regulations; and
- 5           (c) the packing, labelling and storage of explosives; and
- 6           (d) the qualifications, training and experience of people to handle  
7           explosives; and
- 8           (e) the authorisation of people to handle explosives; and
- 9           (f) the authorisation of vehicles to carry explosives and the routes  
10           over which explosives may or must not be carried; and
- 11           (g) the purposes for which, and the circumstances in which,  
12           explosives may or must not be handled; and
- 13           (h) the duties of people, including reporting and notification  
14           requirements, in relation to explosives; and
- 15           (i) the advertising, display and sale of explosives; and
- 16           (j) the making and keeping of records in relation to explosives and  
17           their inspection.
- 18           *Note*     An example is part of the Act, is not exhaustive and may extend, but  
19                   does not limit, the meaning of the provision in which it appears (see  
20                   Legislation Act, s 126 and s 132).
- 21           (4) The regulations may also make provision in relation to dangerous  
22           substances, and other substances, that can be used to manufacture  
23           explosives.

1 **215 Regulations about licences**

- 2 (1) The regulations may make provision in relation to licences for  
3 handling dangerous substances, including, for example—
- 4 (a) prescribing the circumstances in which a licence is required for  
5 handling dangerous substances by, for example, the class or  
6 kind of dangerous substance, the kind of handling, the  
7 circumstances of the handling or the amount handled; and
- 8 (b) the suitability of a person to be licensed to handle dangerous  
9 substances, including—
- 10 (i) the knowledge, experience and training of the person; and  
11 (ii) the testing or examination of a person to decide whether  
12 the person is, or continues to be, a suitable person to hold  
13 a licence; and
- 14 (c) the suitability of premises (including vehicles) in relation to a  
15 licence; and
- 16 (d) the kinds of licences that may be issued and the authority given  
17 to a licensee by a particular kind of licence; and
- 18 (e) the conditions of a licence; and
- 19 (f) the creation and publication of registers in relation to licences;  
20 and
- 21 (g) authorising a person to handle a prohibited dangerous  
22 substance or controlled dangerous substance for research,  
23 education or any other purpose.

24 *Note* An example is part of the Act, is not exhaustive and may extend, but  
25 does not limit, the meaning of the provision in which it appears (see  
26 Legislation Act, s 126 and s 132).

- 1 (2) The regulations may also provide the circumstances in which a  
2 licence or other form of authority (however described) to handle a  
3 dangerous substance under a corresponding law authorises a person  
4 to handle the dangerous substance in the ACT.

5 **216 Regulations about dangerous substances generally**

- 6 (1) The regulations may make provision in relation to dangerous  
7 substances (including explosives), including, for example—
- 8 (a) the methods and equipment for examining and testing a  
9 substance to decide whether the substance is a dangerous  
10 substance; and
  - 11 (b) the methods and equipment for classifying dangerous  
12 substances; and
  - 13 (c) the classification of dangerous substances, including the  
14 classification (however described) to which a dangerous  
15 substance does or does not belong; and
  - 16 (d) the advertising, display and sale of dangerous substances; and
  - 17 (e) the safe handling of dangerous substances; and
  - 18 (f) the authorisation, control, notification and prohibition of the  
19 handling of dangerous substances; and
  - 20 (g) the containers, plant, premises and systems for handling  
21 dangerous substances, including—
    - 22 (i) the suitability of premises (including vehicles) for  
23 handling dangerous substances; and
    - 24 (ii) the design, manufacture, construction, supply,  
25 installation, operation, maintenance, repair and use of  
26 containers, premises, plant and systems for handling  
27 dangerous substances; and

- 1 (iii) the design, siting, construction and management of plant,  
2 premises and systems for handling dangerous substances;  
3 and
- 4 (iv) the inspection, examination and testing of containers,  
5 plant, premises and systems for handling dangerous  
6 substances; and
- 7 (v) the qualifications and authorisation of people installing,  
8 maintaining or repairing containers, plant, premises and  
9 systems for handling dangerous substances; and
- 10 (vi) safety requirements and safety procedures in relation to  
11 containers, plant, premises and systems for handling  
12 dangerous substances; and
- 13 (h) the packing, marking, labelling and packaging of dangerous  
14 substances, including—
- 15 (i) the maximum sizes for containers and packages of  
16 dangerous substances; and
- 17 (ii) the construction and properties of containers and  
18 packages for dangerous substances; and
- 19 (i) the preparation, review, supply and making available of safety  
20 information about dangerous substances; and
- 21 (j) placarding in relation to dangerous substances, including the  
22 placarding of manufacturing and storage facilities and other  
23 premises where dangerous substances are handled; and
- 24 (k) safety management systems, including—
- 25 (i) the preparation, implementation, keeping up to date and  
26 documentation of safety management systems; and
- 27 (ii) the documentation of compliance with duties under safety  
28 management systems; and

- 1 (l) the making and keeping of records in relation to dangerous  
2 substances (including plant and premises for handling  
3 dangerous substances) and their inspection and auditing; and
- 4 (m) the duties of people, including reporting and notification  
5 requirements, in relation to dangerous substances; and
- 6 (n) the creation and publication of registers in relation to  
7 dangerous substances and premises, plant and systems for  
8 handling dangerous substances; and
- 9 (o) the safety procedures to be complied with in relation to  
10 premises used to handle dangerous substances.

11 *Note* An example is part of the Act, is not exhaustive and may extend, but  
12 does not limit, the meaning of the provision in which it appears (see  
13 Legislation Act, s 126 and s 132).

- 14 (2) The regulations may also make provision in relation to substances  
15 that can be used to manufacture dangerous substances.

16 **217 Regulations may exempt people, plant or premises from**  
17 **Act**

- 18 (1) The regulations may—
- 19 (a) exempt plant, premises or a person, from this Act; or
- 20 (b) authorise the chief executive to exempt plant, premises or a  
21 person, from this Act.

22 *Note* A reference to an Act includes a reference to a provision of an Act (see  
23 Legislation Act, s 7 (3)).

- 24 (2) An exemption given under a regulation mentioned in subsection (1)  
25 may be conditional.
- 26 (3) The regulations may make provision in relation to the failure to  
27 comply with a condition of an exemption (including an exemption  
28 under this section).

- 1 (4) The regulations may provide for the chief executive to—
- 2 (a) suspend the operation of a regulation mentioned in
- 3 subsection (1) (a) in a certain way or in certain circumstances;
- 4 or
- 5 (b) suspend the operation of an exemption given by the chief
- 6 executive to plant or premises, or a person, in a certain way or
- 7 in certain circumstances.

## Chapter 13      Miscellaneous

### 218    Minister may exempt people, plant, premises or dangerous substances from Act

- (1) The Minister may, in writing, exempt plant, premises or a person, from this Act.

*Note*      A reference to an Act includes a reference to a provision of an Act (see Legislation Act, s 7 (3)).

- (2) An exemption may be conditional.

- (3) An exemption under subsection (1) has no effect to the extent that it is inconsistent with the regulations.

- (4) An exemption is a disallowable instrument.

*Note*      A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### 219    Codes of practice

- (1) The Minister may, in writing, approve codes of practice setting out guidelines for this Act.

- (2) An approved code of practice may apply, adopt or incorporate an instrument, as in force from time to time.

*Note 1*      The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2*      A notifiable instrument must be notified under the Legislation Act.

- (3) An approval of a code of practice is a disallowable instrument.

*Note*      A disallowable instrument must be notified and presented to the Legislative Assembly, under the Legislation Act.

1      **220    Notification of certain incorporated documents**

- 2      (1) This section applies to—
- 3          (a) an incorporated document; or
- 4          (b) an amendment of, or replacement for, an incorporated
- 5              document.

6      **Example of replacement document**

7      a new edition of the incorporated document

8      *Note 1*    For the meaning of *incorporated document*, see the dictionary.

9      *Note 2*    An example is part of the Act, is not exhaustive and may extend, but

10              does not limit, the meaning of the provision in which it appears (see

11              Legislation Act, s 126 and s 132).

- 12      (2) The chief executive may prepare a written notice (an *incorporated*
- 13          *document notice*) for the incorporated document, amendment or
- 14          replacement that contains the following information:

- 15          (a) for an incorporated document—details of the document,
- 16              including its title, author and date of publication;
- 17          (b) for a replacement of an incorporated document—details of the
- 18              replacement, including its title, author and date of publication;
- 19          (c) for an amendment of an incorporated document—the date of
- 20              publication of the amendment (or of the document as amended)
- 21              and a brief summary of the effect of the amendment;
- 22          (d) for an incorporated document or any amendment or
- 23              replacement—
- 24                  (i) a date of effect (no earlier than the day after the day of
- 25                      notification of the notice); and
- 26                  (ii) details of how access to inspect the document,
- 27                      amendment or replacement may be obtained under
- 28                      section 206 (Inspection of incorporated documents); and



- 1 (iii) details of how copies may be obtained, including an  
2 indication of whether there is a cost involved.
- 3 (3) An incorporated document notice is a notifiable instrument.
- 4 *Note* A notifiable instrument must be notified under the Legislation Act.
- 5 (4) An incorporated document (other than a document mentioned in  
6 section 10 (3) (Meaning of *dangerous substance*) as in effect at the  
7 commencement of this section), and any amendment or replacement  
8 of an incorporated document, has no effect under this Act unless—
- 9 (a) an incorporated document notice is notified in relation to the  
10 document, amendment or replacement; or
- 11 (b) the document, amendment or replacement is notified under the  
12 Legislation Act, section 47 (6).
- 13 (5) The Legislation Act, section 47 (7) does not apply in relation to  
14 incorporated documents.
- 15 (6) In this section:
- 16 ***amendment***, of an incorporated document, includes an amendment  
17 of a replacement for the incorporated document.
- 18 ***replacement***, for an incorporated document, means—
- 19 (a) a document that replaces the incorporated document; or
- 20 (b) a document (an ***initial replacement***) that replaces a document  
21 mentioned in paragraph (a); or
- 22 (c) a document (a ***further replacement***) that replaces an initial  
23 replacement or any further replacement.

1    **221    Determination of fees**

2    (1) The Minister may, in writing, determine fees for this Act.

3        *Note*      The Legislation Act contains provisions about the making of  
4                    determinations and regulations relating to fees (see pt 6.3).

5    (2) A determination is a disallowable instrument.

6        *Note*      A disallowable instrument must be notified, and presented to the  
7                    Legislative Assembly, under the Legislation Act.

8    **222    Approved forms**

9    (1) The Minister may, in writing, approve forms for this Act.

10        *Note*      For other provisions about forms, see Legislation Act, s 255.

11    (2) If the Minister approves a form for a particular purpose, the  
12        approved form must be used for that purpose.

13    (3) An approved form is a notifiable instrument.

14        *Note*      A notifiable instrument must be notified under the Legislation Act.

15    **223    Regulation-making power**

16    (1) The Executive may make regulations for this Act.

17        *Note*      Regulations must be notified, and presented to the Legislative  
18                    Assembly, under the Legislation Act.

19    (2) The regulations may prescribe offences for contraventions of the  
20        regulations and prescribe maximum penalties of not more than  
21        30 penalty units for offences against the regulations.

1 **Chapter 14**            **Consequential and**  
2                                    **transitional matters**

3 **224 Repeals**

4        The following legislation is repealed:

- 5        • *Dangerous Goods Act 1975* A1975-68  
6        • *Dangerous Goods Regulations 1978*  
7        • *Dangerous Goods (Exemption) Regulations 1989* SL1989-2.

8 **225 Existing licences**

9        (1) Despite the repeal of the *Dangerous Goods Act 1975*, a prescribed  
10        former licence is taken to be a licence in force under this Act.

11        (2) The prescribed former licence is subject to—

- 12            (a) any conditions stated in the licence; and  
13            (b) any conditions prescribed under the regulations.

14        (3) If the prescribed former licence has not been ended under this Act,  
15        the licence continues in force for the remainder of the term of the  
16        licence.

17        (4) To remove any doubt, a former explosives licence ends on the  
18        commencement of this Act.

19        (5) In this section:

20        *former explosives licence* means a licence or permit under the  
21        *Dangerous Goods Act 1975* that authorised a person to handle  
22        (within the meaning of this Act) an explosive within the meaning of  
23        that Act.

1            *prescribed former licence* means a licence, other than a former  
2            explosives licence, in force under the *Dangerous Goods Act 1975*  
3            immediately before the commencement of this Act.

4            **226 Meaning of LPG for s 7**

5            (1) This section applies despite section 7 (2) (Exclusions from Act)  
6            (which defines LPG for that section).

7            (2) In section 7 (1):

8            *LPG* means a gas in its vapour phase composed predominantly of 1  
9            or more of the following hydrocarbons:

10           (a) propane;

11           (b) propene (propylene);

12           (c) butane;

13           (d) butene (butylene).

14           (3) This section expires on 1 July 2004

15           *Note*     The *Construction Occupations Legislation Amendment Act 2003*, which  
16           commences on 1 July 2004, consequentially amends the *Gas Safety Act*  
17           2000 to create the link to the definition as it appears in s 7 (2).

18           **227 Transitional regulations**

19           (1) The regulations may prescribe savings or transitional matters  
20           necessary or convenient to be prescribed because of the enactment  
21           of this Act.

22           (2) Without limiting the scope of subsection (1), the regulations may  
23           prescribe matters necessary or convenient to be prescribed for  
24           carrying out or giving effect to the provisions of this Act.

25           (3) Regulations made for this section must not be taken to be  
26           inconsistent with this Act as far as they can operate concurrently  
27           with this Act.

1       (4) This section is additional to, and does not limit, section 228.

2       **228   Modification of ch 14's operation**

3             The regulations may modify the operation of this chapter to make  
4             provision in relation to any matter that, in the Executive's opinion,  
5             is not, or is not adequately, dealt with in this chapter.

6       **229   Legislation amended—sch 1**

7             This Act amends the legislation mentioned in schedule 1.

8       **230   Expiry of ch 14**

9             This chapter expires 2 years after the day it commences.

1 **Schedule 1 Consequential amendments**  
2 (see s 229)

3 **Part 1.1 Court Security Act 2001**

4 **[1.1] Dictionary, definition of *explosive***

5 *substitute*

6 *explosive*—see the *Dangerous Substances Act 2003*, section 73.

7 **Part 1.2 Firearms Act 1996**

8 **[1.2] Section 4, definition of *explosive***

9 *substitute*

10 *explosive*—see the *Dangerous Substances Act 2003*, section 73.

11 **[1.3] Section 126 (2) (g)**

12 *substitute*

13 (g) ammunition and components of ammunition, other than the  
14 manufacture or transport of ammunition;

15 *Note* For the manufacture or transport of ammunition, see the  
16 *Dangerous Substances Act 2003*.

17 **Part 1.3 Firearms Regulations 1997**

18 **[1.4] Regulation 44 (1)**

19 *substitute*

20 (1) A police officer does not require authorisation under a licence or  
21 permit to be in possession of, or to use, a prohibited firearm  
22 mentioned in the Act, schedule 1, item 15 during the ordinary

1 exercise of the police officer's functions as an inspector under the  
2 *Dangerous Substances Act 2003*.

### 3 **Part 1.4** **Legislation Act 2001**

4 **[1.5] Schedule 1, part 1.2, table, item about *Dangerous Goods***  
5 ***Act 1975***

6 *omit*

### 7 **Part 1.5** **Occupational Health and** 8 **Safety Act 1989**

9 **[1.6] Section 5 (1), definition of *associated law*, paragraph (a)**

10 *omit*

11 **[1.7] Section 5 (1), definition of *associated law***

12 *renumber paragraphs when Act next republished under Legislation*  
13 *Act*

### 14 **Part 1.6** **Occupational Health and** 15 **Safety Regulations 1991**

16 **[1.8] Regulation 2, definitions of *blaster*, *blast plan*, *dangerous***  
17 ***goods*, *explosive*, *firework*, *permit* and *use***

18 *omit*

19 **[1.9] Regulation 2AA**

20 *omit*

1 **[1.10] Regulation 2A**

2 *substitute*

3 **2A Matters that are a dangerous occurrence—Act, s 5 (1), def**  
4 ***dangerous occurrence***

5 (1) Each of the following is declared to be a dangerous occurrence:

6 (a) damage to a boiler, pressure vessel, plant, equipment or other  
7 thing that endangers or is likely to endanger the health or  
8 safety of people at a workplace;

9 (b) damage to, or failure of, a load-bearing member or control  
10 device of a crane, hoist, conveyor, lift, escalator, moving walk,  
11 plant, scaffolding, gear, amusement device or public stand;

12 (c) an uncontrolled fire, explosion, or escape of gas, a dangerous  
13 substance or steam;

14 (d) another occurrence involving imminent risk of—

15 (i) fire, explosion, or an escape of gas, a dangerous  
16 substance or steam; or

17 (ii) death of, or serious personal injury to, anyone; or

18 (iii) substantial damage to property.

19 (2) In this regulation:

20 *dangerous substance*—see the *Dangerous Substances Act 2003*,  
21 section 10.

22 **[1.11] Part 4**

23 *omit*



1 **Part 1.7** **Road Transport (Alcohol and**  
2 **Drugs) Act 1977**

3 **[1.12] Section 4B (1) (f) (ii)**

4 *substitute*

- 5 (ii) a vehicle on which a sign or marking is required to be  
6 displayed under the *Dangerous Substances Act 2003*; or

7 **[1.13] Section 4B (5), definition of *dangerous goods vehicle***

8 *omit*

9 **Part 1.8** **Road Transport (Safety and**  
10 **Traffic Management)**  
11 **Regulations 2000**

12 **[1.14] Regulation 59 heading**

13 *substitute*

14 **59 Carrying dangerous substances**

15 **[1.15] Regulation 59 (2), definition of *dangerous goods***

16 *omit*

17 **[1.16] Regulation 59 (2), definition of *explosives substance***

18 *substitute*

19 *explosive substance*—

- 20 (a) see the *Dangerous Substances Act 2003*, section 73, definition  
21 of *explosive*; and  
22 (b) includes any other dangerous substance under that Act that can  
23 explode.

## 1 Dictionary

2 (see s 3)

3 *Note 1* The Legislation Act contains definitions and other provisions relevant to  
4 this Act.

5 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 6 • ACT
- 7 • administrative unit
- 8 • chief executive
- 9 • contravene
- 10 • fail
- 11 • found guilty
- 12 • indictable offence (see s 190)
- 13 • instrument (see s 14)
- 14 • notification (see s 63)
- 15 • penalty unit (see s 133)
- 16 • State.

17 *alleged contravention*, for part 6.5 (Enforceable undertakings)—see  
18 section 123 (3) (b).

19 *analysis*, of a dangerous substance or anything else, includes  
20 examining or testing the substance or thing.

21 *approved code of practice* means a code of practice approved under  
22 section 219 (1).

23 *Australian Dangerous Goods Code*—see section 10 (3).

24 *Australian Explosives Code*—see section 10 (3).

25 *Australian Standard 1940*—see section 10 (3).

26 *at* premises includes in or on the premises.

27 *authorised analyst* means a person appointed as an authorised  
28 analyst under section 210.

- 1        **authorised person**, for part 5.2 (Preservation of site of dangerous  
2        occurrence)—see section 85.
- 3        **basis**, for giving a prohibition notice—see section 108.
- 4        **business** includes—
- 5        (a) a business not carried on for profit; and
- 6        (b) a trade or profession.
- 7        **cause** death or injury to a person, or substantial damage to property  
8        or the environment, means substantially contribute directly or  
9        indirectly to the death, injury or damage.
- 10       **close associate**, of someone, for chapter 4 (Licences for dangerous  
11       substances)—see section 48.
- 12       **compliance agreement**—see section 94 (2).
- 13       **condition**, of a licence, includes a condition prescribed under the  
14       regulations that applies to the licence.
- 15       **connected**, with an offence, for chapter 7 (Enforcement powers)—  
16       see section 141.
- 17       **carry** a dangerous substance or anything else means move the  
18       substance or thing by any means.
- 19       **Examples of carry for a dangerous substance**
- 20       1 moving, transferring or transporting a dangerous substance within a  
21       processing system or pipeline
- 22       2 loading a dangerous substance onto, and unloading the substance from, a  
23       vehicle
- 24       3 driving a vehicle carrying a dangerous substance
- 25       *Note* An example is part of the Act, is not exhaustive and may extend, but  
26       does not limit, the meaning of the provision in which it appears (see  
27       Legislation Act, s 126 and s 132).
- 28       **controlled dangerous substance**—see section 73.

- 1           ***correctly***—
- 2           (a) classify a dangerous substance—see section 13; and
- 3           (b) pack, store, label or placard a dangerous substance—see
- 4           section 14.
- 5           ***corresponding law*** means—
- 6           (a) a law of the Commonwealth, a State, another Territory or New
- 7           Zealand corresponding, or substantially corresponding, to this
- 8           Act; or
- 9           (b) a law of the Commonwealth, a State, another Territory or New
- 10          Zealand that is declared under the regulations to be a
- 11          corresponding law, whether or not the law corresponds, or
- 12          substantially corresponds, to this Act; or
- 13          (c) the *Dangerous Goods Act 1975*.
- 14          ***dangerous occurrence***—see section 38.
- 15          ***dangerous substance***—
- 16          (a) for part 6.4 (Prohibition notices)—see section 108; and
- 17          (b) for the Act—see section 10.
- 18          ***data***, for chapter 7 (Enforcement powers)—see section 141.
- 19          ***data storage device***, for chapter 7 (Enforcement powers)—see
- 20          section 141.
- 21          ***decision-maker***, for chapter 9 (Administrative review of
- 22          decisions)—see section 187.
- 23          ***disciplinary action***—see section 68 (3) and (4).
- 24          ***disciplinary notice***—see section 68 (1).
- 25          ***dispose***, of a dangerous substance or anything else, includes
- 26          impound, isolate or destroy the substance or thing.
- 27          ***emergency order***—see section 179.

- 1           ***enforceable undertaking***, for part 6.5—see section 122.
- 2           ***environment*** includes the built and natural environment.
- 3           ***examine*** includes inspect, weigh, count, test and measure.
- 4           ***executive officer***, of a corporation, means a person, by whatever  
5 name called and whether or not the person is a director of the  
6 corporation, who is concerned with, or takes part in, the  
7 corporation's management.
- 8           ***explosive***—see section 73.
- 9           ***export*** a dangerous substance or anything else means export the  
10 substance or thing from the ACT.
- 11          ***handle***, a dangerous substance—see section 11.
- 12          ***handling authority***—see section 56 (1) (d).
- 13          ***hazard***—see section 15.
- 14          ***import*** a dangerous substance or anything else means import the  
15 substance or thing into the ACT.
- 16          ***improvement notice***—see section 100.
- 17          ***incorporated document*** means—
- 18           (a) a document mentioned in section 10 (3); or
- 19           (b) an instrument applied, adopted or incorporated under the  
20 regulations.
- 21          ***infringement notice***—see the *Magistrates Court Act 1930*,  
22 section 117.
- 23          ***infringement notice offence***—see the *Magistrates Court Act 1930*,  
24 section 117.
- 25          ***inspector*** means an inspector under section 207.
- 26          ***install*** plant or a system includes construct the plant or system.

- 1           ***internally reviewable decision***—see section 188 (1).
- 2           ***internal reviewer***—see section 188 (3).
- 3           ***licence*** means a licence issued under this Act.
- 4           ***manufacture*** a dangerous substance or anything else includes—
- 5           (a) make, remake, alter, break-up, process, recondition or treat the
- 6           substance or thing; and
- 7           (b) change the substance or thing in a way that affects its
- 8           properties or performance.
- 9           ***NOHSC approved criteria***—see section 10 (3).
- 10          ***NOHSC List of Designated Hazardous Substances***—see
- 11          section 10 (3).
- 12          ***non-commercial***, for the handling of a dangerous substance—see
- 13          section 12.
- 14          ***offence***, for chapter 7 (Enforcement powers)—see section 141.
- 15          ***officer***, of a corporation, means—
- 16          (a) a director or secretary of the corporation; or
- 17          (b) a person—
- 18              (i) who makes, or takes part in making, decisions that affect
- 19              all, or a substantial part, of the business of the
- 20              corporation; or
- 21              (ii) in accordance with whose instructions or wishes the
- 22              directors of the corporation are accustomed to act
- 23              (excluding advice given by the person in the proper
- 24              exercise of functions attaching to the person’s
- 25              professional capacity or business relationship with the
- 26              directors or the corporation); or
- 27          (c) a receiver, or receiver and manager, of the corporation’s
- 28          property; or

- 1 (d) an administrator of the corporation; or
- 2 (e) an administrator of a deed of company arrangement executed  
3 by the corporation; or
- 4 (f) a liquidator of the corporation; or
- 5 (g) a trustee or other person administering a compromise or  
6 arrangement made between the corporation and someone else.
- 7 ***person assisting***, in relation to a search warrant, for chapter 7  
8 (Enforcement powers)—see section 141.
- 9 ***person in charge***, of premises, includes—
- 10 (a) a person believed, on reasonable grounds, to be a person in  
11 charge of, or the occupier of, the premises and a person  
12 apparently in charge of, or the occupier of, the premises; and
- 13 (b) anyone else in control of the premises.
- 14 *Note* ***Premises*** includes any land, structure or vehicle and any part of an area  
15 of land, a structure or vehicle.qza
- 16 ***person in control***—see section 17.
- 17 ***plant*** includes—
- 18 (a) machinery or equipment (including scaffolding), or an  
19 appliance, implement or tool; and
- 20 (b) a container used for packing, carrying or storing dangerous  
21 substances; and
- 22 (c) a vehicle used for handling a dangerous substance; and
- 23 (d) a component, fitting or accessory for the plant; and
- 24 (e) a building or other structure.

- 1           ***premises***—
- 2           (a) includes land or a structure or vehicle and any part of an area
- 3           of land or a structure or vehicle; and
- 4           (b) to which a prohibition notice relates—see section 108.
- 5           ***prohibited dangerous substance***—see section 73.
- 6           ***prohibition notice***—see section 109.
- 7           ***reasonable steps***, in relation to a risk—see section 16.
- 8           ***recall order***, for chapter 8 (Emergency orders)—see section 178.
- 9           ***relevant person***, for an enforceable undertaking—see section 122.
- 10          ***relevant responsible person***—
- 11          (a) for a compliance agreement—see section 93; and
- 12          (b) for an improvement notice—see section 99; and
- 13          (c) for a prohibition notice—see section 108.
- 14          ***responsible person***, for a dangerous substance—see section 18.
- 15          ***reviewable decision***—see section 186.
- 16          ***risk***—see section 15.
- 17          ***safety duty***, for part 3.2 (Failure to comply with safety duties)—see
- 18          section 41.
- 19          ***safety management system***, for handling a dangerous substance—
- 20          see section 19.
- 21          ***safety undertaking***, for part 6.5 (Enforceable undertakings)—see
- 22          section 123 (2).
- 23          ***search warrant***, for chapter 7 (Enforcement powers)—see
- 24          section 141.



- 1           **sell** includes—
- 2           (a) barter or offer or attempt to sell; and
- 3           (b) possess for sale; and
- 4           (c) advertise for sale (whether directly or indirectly); and
- 5           (d) display for sale; and
- 6           (e) cause or allow to be sold or offered for sale; and
- 7           (f) dispose of in any way for valuable consideration; and
- 8           (g) dispose of to an agent for sale on consignment; and
- 9           (h) give away for the purpose of advertisement or for trade or
- 10           commerce; and
- 11           (i) sell for the purpose of resale.
- 12           **serious harm**, to a person—see the Criminal Code, dictionary.
- 13           **site**, of a dangerous occurrence at premises, for part 5.2
- 14           (Preservation of site of dangerous occurrence)—see section 85.
- 15           **site preservation period** for part 5.2 (Preservation of site of
- 16           dangerous occurrence)—see section 85.
- 17           **substance** includes a matter, material or thing, whether solid, liquid
- 18           or gas or in a mixture.
- 19           **suitable person**, for a licence—see section 49.
- 20           **supply** a dangerous substance or anything else includes—
- 21           (a) sell the substance or thing; and
- 22           (b) transfer ownership of, or responsibility for, the substance or
- 23           thing.

- 1            **system** includes the following:
- 2            (a) a mechanical system;
- 3            (b) an electronic system;
- 4            (c) a computer program;
- 5            (d) a system of work;
- 6            (e) a management system;
- 7            (f) a safety management system;
- 8            (g) a system prescribed under the regulations;
- 9            (h) a system that includes any combination of the systems
- 10           mentioned in paragraphs (a) to (g).
- 11           **trade or commerce** includes a business or professional activity.
- 12           **vehicle** means any kind of vehicle on wheels (including a vehicle
- 13           used on railways or tramways), and includes an aircraft or vessel
- 14           used on water.

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## Endnotes

**1        Presentation speech**

Presentation speech made in the Legislative Assembly on        2003.

**2        Notification**

Notified under the Legislation Act on        2003.

**3        Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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