



Queensland

Transport Infrastructure (Dangerous Goods by Rail) Regulation 2008

Subordinate Legislation 2008 No. 426

made under the

Statutory Instruments Act 1992

Transport Infrastructure Act 1994

Contents

		Page
Part 1	Preliminary	
Division 1	Introductory and application	
1	Short title	10
2	Commencement	10
3	Main purposes of this regulation	10
4	Provision about exemption related to inner package requirement	10
5	Matters prescribed for particular exempt transport	11
6	Special provisions for tools of trade and dangerous goods for private use	11
Division 2	Interpretation	
7	Definitions	13
8	Applying ADG Code to this regulation	13
9	References to codes, standards and rules	14
10	Inconsistency between regulation and codes etc.	14
11	References to determinations, exemptions or approvals	14
12	References to amendment of determinations etc.	15
13	References to load	15
14	Meaning of bulk container	15
15	Meaning of intermediate bulk container	16

Contents

16	Meaning of multiple-element gas container	16
17	Meaning of tank	16
18	When dangerous goods are packed in limited quantities	17
Division 3	Instruction and training	
19	Instruction and training	18
Division 4	Goods suspected of being dangerous goods or goods too dangerous to be transported	
20	Goods suspected of being dangerous goods or goods too dangerous to be transported	20
Division 5	Determinations	
21	Determination about dangerous goods and packaging	20
22	Determinations about vehicles, routes, areas etc.	21
23	Administrative determinations	22
24	Determinations may be subject to conditions.	22
25	Effect of determinations on contrary obligations under this regulation	23
26	Register of determinations	23
27	Records of determinations	23
28	Offence to do anything prohibited or regulated by a determination	24
Division 6	Non-participating jurisdictions	
29	Declaration of non-participating jurisdictions	24
Part 2	Key concepts	
30	Dangerous goods—Act, sch 6, definition dangerous goods	25
31	Goods too dangerous to be transported—Act, sch 6, definition goods too dangerous to be transported	25
32	UN classes, UN divisions and categories of dangerous goods . .	26
33	Subsidiary risk	26
34	Packing groups.	27
35	Incompatibility.	27
Part 3	Transport of dangerous goods to which special provisions apply	
36	Application of pt 3.	28
37	Definition for pt 3	28
38	Duty of consignor	29
39	Duty of packer	29
40	Duty of loader	29
41	Duty of prime contractor and rail operator	29

Part 4	Packaging	
Division 1	General	
42	Part does not apply to dangerous goods packed in limited quantities	30
43	References to part 4 of the ADG Code include dangerous goods list requirements	30
Division 2	Suitability and design of packaging	
44	Unsuitability of packaging for transport	30
45	Marking packaging	31
46	Applications for approval of packaging design	31
47	Approval of packaging design	32
48	Recognised testing facilities	33
49	Test certificates and reports	33
50	Approval of overpack preparation method	34
51	Authorised entity may issue approvals	34
Division 3	Prohibition on the sale or supply of noncompliant packaging	
52	Offence to sell or supply noncompliant packaging	36
Division 4	Offences about general packaging	
53	Definition for div 4.	36
54	Duty of consignor	36
55	Duties of packer	37
56	Duty of loader	37
57	Duty of prime contractor and rail operator	37
Division 5	Offences about other packaging	
58	Definition for div 5.	38
59	Approval required for attaching compliance plate	38
60	Duties of manufacturers about compliance plates for portable tanks, MEGCs and tank vehicles	38
61	Duty of owners of portable tanks, demountable tanks, MEGCs and tank vehicles	39
62	Duties of consignor.	39
63	Duties of packer	40
64	Duty of loader	40
65	Duties of prime contractor and rail operator	40
66	Duties of driver	41

Contents

Division 6	Offences about overpacks	
67	Duty of consignor	41
68	Duty of packer	42
69	Duty of loader	42
70	Duty of prime contractor and rail operator	42
71	Duty of driver	43
Division 7	Chief executive’s performance testing powers	
72	Requiring production of packaging for testing	43
73	Requiring evidence of performance tests	44
Part 5	Consignment procedures	
Division 1	Marking and labelling	
74	Meaning of appropriately marked	44
75	Duties of consignor	45
76	Duties of packer	45
77	Duties of prime contractor and rail operator	46
Division 2	Placarding	
78	When load must be placarded	47
79	Meaning of placards and appropriately placarded	48
80	Duties of consignor	48
81	Duties of loader	49
82	Duties of prime contractor and rail operator	49
Part 6	Safety standards for vehicles and equipment	
83	Duty of owner	50
84	Duty of consignor	50
85	Duty of loader	50
86	Duty of prime contractor and rail operator	51
Part 7	Transport operations for particular dangerous goods	
Division 1	Self-reactive substances, organic peroxides and particular other substances	
87	Application of div 1	51
88	Duty of consignor	52
89	Duty of loader	52
90	Duties of prime contractor and rail operator	52
Division 2	Goods too dangerous to be transported	
91	Application of div 2	53
92	Duty of loader	53

93	Duty of prime contractor and rail operator	53
94	Duty of driver	53
Part 8	Stowage and restraint	
95	Duties of consignor.	54
96	Duties of loader	54
97	Duties of prime contractor and rail operator	54
Part 9	Segregation, separation and marshalling	
Division 1	Application	
98	Application of pt 9.	55
99	Exception for particular goods for driver's personal use.	55
Division 2	Segregation	
100	Loads on rail wagons	56
101	Duty of consignor	56
102	Duty of loader.	57
103	Duty of prime contractor.	57
104	Duty of rail operator	58
105	Duty of driver	58
106	Approval of methods of segregation.	58
107	Approval of design of type II segregation devices	59
Division 3	Separation and marshalling	
108	Duties of rail operator.	60
109	Duties of loader	60
110	Separation and marshalling approval.	61
Part 10	Carriage of dangerous goods on passenger trains	
111	Duty of prime contractor and rail operator	62
112	Duties of passenger.	62
Part 11	Bulk transfer of dangerous goods	
Division 1	General	
113	Meaning of bulk transfer.	63
Division 2	Equipment and transfer	
114	Definitions for div 2.	63
115	Duties of transferor—hose assemblies.	64
116	Duties of transferor—general	65
117	Duties of occupier.	66
118	Duties of prime contractor	67
119	Duty of rail operator	68

Contents

Division 3	Filling ratio and ullage	
120	Application of div 3	68
121	Duty of transferor	68
122	Duty of prime contractor and rail operator	69
123	Duty of driver	69
Part 12	Documentation	
Division 1	Transport documentation	
Subdivision 1	False or misleading information	
124	False or misleading information	70
Subdivision 2	Requirements about keeping transport documentation	
125	Duty of consignor	70
126	Duty of prime contractor	71
127	Duty of rail operator	71
128	Duties of driver	71
Division 2	Emergency information	
129	Definition for div 2.	72
130	Duty of consignor	72
131	Duty of prime contractor	73
132	Duty of rail operator	73
133	Duties of driver	73
134	Approval of emergency information	74
Division 3	Prior notice for specific dangerous goods	
135	Duty of consignor	74
136	Duty of rail operator	74
137	Duty of prime contractor	75
Part 13	Procedures during transport	
Division 1	Immobilised rail vehicles	
138	Duty of driver	75
139	Duty of rail operator	75
Division 2	Unloading at unattended places	
140	Duty of rail operator	76
Part 14	Emergencies	
Division 1	Emergencies generally	
141	Duties of driver and rail operator for dangerous situation.	77
142	Duties of prime contractor and rail operator—food or food packaging	77

143	Duties of prime contractor and rail operator to inform chief executive	79
Division 2	Emergencies involving placard loads	
144	Telephone advisory service	80
145	Emergency plans	81
146	Duties of consignor—information and resources	82
147	Duties of prime contractor—information and resources	83
148	Duties of rail operator—information and resources	84
Part 15	Administrative matters	
Division 1	Provisions about registers	
149	Registers to which this division applies	85
150	Registers may be kept by computer	85
151	Inspection of registers	85
Division 2	Recommendations by chief executive and dangerous goods authorities	
152	Recommendations by chief executive	86
153	Recommendations by dangerous goods authorities	86
Division 3	Mutual recognition of determinations, exemptions and approvals	
154	Corresponding determinations	87
155	Corresponding exemptions	88
156	Corresponding approvals	88
Part 16	Exemptions	
Division 1	Purpose of part	
157	Purpose of pt 16	89
Division 2	General matters about exemptions	
158	Applications for exemptions	90
159	Exemption notice to be kept	91
160	Register of exemptions	91
161	Records of exemptions	92
Division 3	Referring matters to the competent authorities panel	
162	Referring matters to the competent authorities panel	92
163	Effect of competent authorities panel decision about application	93
164	Effect of the competent authorities panel decisions about amending, suspending or cancelling exemption	93

Contents

Part 17	Administrative determinations and approvals	
Division 1	General	
165	Applications	94
166	Form of administrative determinations and approvals	95
167	When administrative determinations and approvals not to be made etc.	95
168	Reasons for refusal of applications	95
169	Periods and conditions	95
170	Replacement administrative determinations and approvals	96
Division 2	Register of approvals	
171	Register of approvals	96
172	Records of approvals	96
Division 3	Referring matters to the competent authorities panel	
173	Referring matters to the competent authorities panel	97
174	Effect of competent authorities panel decision about application.	98
175	Effect of competent authorities panel decision about amending, suspending or cancelling approval	98
Division 4	Amendment, suspension or cancellation of administrative determinations	
176	Amending, suspending or cancelling administrative determinations	99
Part 18	Review and appeal of decisions	
177	Review of and appeals against decisions.	99
Part 19	Fees	
178	Fees	100
Part 20	Repeal and transitional provisions	
Division 1	Repeal provision	
179	Repeal	100
Division 2	Transitional provisions	
Subdivision 1	General provisions	
180	Definitions for div 2.	101
181	Lawful conduct under previous law	101
Subdivision 2	Determinations and corresponding determinations	
182	Continuing effect of particular determinations	101
183	Existing applications for particular administrative determinations	102
184	Existing applications for amendments of particular administrative determinations.	102

185	Continuing effect of particular corresponding determination	103
Subdivision 3	Approvals and corresponding approvals	
186	Continuing effect of particular approvals	103
187	Existing applications for particular approvals	104
188	Existing applications for amendments of particular approvals . . .	105
189	Continuing effect of particular corresponding approvals	105
Subdivision 4	Particular existing requirements	
190	Particular requirements made of a person continue.	106
191	Requirements relating to particular incidents continue.	106
Subdivision 5	Existing reviews and appeals	
192	Definition for sdiv 5.	107
193	Reviews about particular decisions	107
194	Appeals about particular decisions	108
Part 21	Amendment of Statutory Instruments Regulation 2002	
195	Regulation amended in pt 21	110
196	Amendment of sch 1 (Statutory instruments that are subordinate legislation)	110
Schedule 1	Reviewable decisions	111
Schedule 2	Fees	112
Schedule 3	Dictionary	113

[s 1]

Part 1 Preliminary

Division 1 Introductory and application

1 Short title

This regulation may be cited as the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2008*.

2 Commencement

This regulation commences on 1 January 2009.

3 Main purposes of this regulation

- (1) The main purposes of this regulation are—
 - (a) to prescribe the obligations of persons involved in the transport of dangerous goods by rail; and
 - (b) to reduce as far as practicable the risks arising from the transport of dangerous goods by rail; and
 - (c) to give effect to the standards, requirements and procedures of the ADG Code as far as they apply to the transport of dangerous goods by rail; and
 - (d) to promote consistency between the standards, requirements and procedures applying to the transport of dangerous goods by rail and those applying to other modes of transport.
- (2) In this section—

obligation includes duty and requirement.

4 Provision about exemption related to inner package requirement

- (1) This section provides information about the exemption under section 440(2)(b) of the Act.

- (2) For section 440(2)(b) of the Act, an inner package, in relation to goods including dangerous goods, is the complete product of the inner packaging of the goods for transport, and consists of the goods and their inner packaging.
- (3) Under part 5, inner packages must be marked and labelled in accordance with chapter 5.2 of the ADG Code.
- (4) Section 5.2.1.8 of the ADG Code states the quantity for which an inner package is required to be marked to comply with chapter 5.2 of the ADG Code.

5 Matters prescribed for particular exempt transport

- (1) For section 440(2)(c)(i)(A) of the Act, the capacity prescribed is 500L.
- (2) For section 440(2)(c)(i)(B) of the Act, the quantity prescribed for a receptacle is 500kg.
- (3) For section 440(2)(c)(ii) of the Act, the following are prescribed as designated dangerous goods—
 - (a) dangerous goods of UN class 1 (explosives), other than—
 - (i) dangerous goods of UN division 1.4S; and
 - (ii) track signals carried in a unit of rolling stock for the safety of persons working in rail transport;
 - (b) dangerous goods of category A of UN division 6.2 (infectious substances);
 - (c) dangerous goods of UN class 7 (radioactive material).
- (4) For section 440(2)(c)(iii) of the Act, the aggregate quantity must be worked out in the way provided for under schedule 3, definition *aggregate quantity*.

6 Special provisions for tools of trade and dangerous goods for private use

- (1) This section applies to dangerous goods that—

[s 6]

- (a) are not transported in the course of a business of transporting goods but are transported by a person who intends to use them or so they may be used for a commercial purpose; and
 - (b) are transported as part of a load that includes—
 - (i) an aggregate quantity of dangerous goods of less than 500 that does not include any dangerous goods of UN division 2.1 (other than aerosols), UN division 2.3 or packing group I; or
 - (ii) an aggregate quantity of dangerous goods of less than 250 that does include dangerous goods of UN division 2.1 (other than aerosols), UN division 2.3 or packing group I, provided that the dangerous goods of UN division 2.3 and packing group I together constitute less than 100 of the aggregate quantity.
- (2) This regulation other than subsections (3) to (5) does not apply to the transport of dangerous goods mentioned in subsection (1).
- (3) A person must not transport dangerous goods mentioned in subsection (1) unless each package in the load including the goods—
- (a) complies with the packaging requirements appropriate to the quantity of dangerous goods, as prescribed in part 4; and
 - (b) is labelled and marked as prescribed in part 5, division 1; and
 - (c) is loaded, secured, segregated, unloaded and otherwise transported in a way that ensures—
 - (i) its packaging remains fit for its purpose; and
 - (ii) risks are eliminated or, if it is not practicable to eliminate risks, are minimised to the greatest practicable extent.

Maximum penalty—40 penalty units.

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- (4) If a load of dangerous goods mentioned in subsection (1) contains dangerous goods of UN class 3, 4, 5 or 6 that together constitute more than 250 of the aggregate quantity of dangerous goods in the load, a person must not transport the load—
- (a) in the passenger compartment of a vehicle; or
 - (b) in an enclosed space that is not separated from the passenger compartment of a vehicle.

Maximum penalty—40 penalty units.

- (5) If a load of dangerous goods mentioned in subsection (1) contains dangerous goods of UN division 2.1, UN division 2.3 or packing group I that together constitute more than 50 of the aggregate quantity of dangerous goods in the load, a person must not transport the load—
- (a) in the passenger compartment of a vehicle; or
 - (b) in any other enclosed space in the vehicle.

Maximum penalty for subsection (5)—40 penalty units.

Division 2 Interpretation

7 Definitions

The dictionary in schedule 3 defines particular words used in this regulation.

8 Applying ADG Code to this regulation

For applying the ADG Code to this regulation, a reference in the code to competent authority in relation to the State is taken, if the context permits, to be a reference to the chief executive.

[s 9]

9 References to codes, standards and rules

(1) In this regulation, a reference to an instrument includes a reference to another instrument as applied or adopted by, or incorporated in, the first instrument.

(2) In this section—

instrument means a code, standard or rule, whether made in or outside Australia, relating to dangerous goods or transport by road or rail, and includes a provision of an instrument.

10 Inconsistency between regulation and codes etc.

(1) This section applies if—

(a) this regulation applies, adopts or incorporates an instrument; and

(b) there is an inconsistency between a provision of this regulation and the instrument as applied, adopted or incorporated.

(2) The provision of this regulation prevails to the extent of the inconsistency.

(3) Despite subsection (2), if a provision of the instrument uses a term that is defined in both the instrument and in this regulation, the provision must be interpreted as if the term had the meaning stated in the instrument, unless the contrary intention appears.

(4) In this section—

instrument means a code, standard or rule, whether made in or outside Australia, for dangerous goods or transport of dangerous goods by rail.

11 References to determinations, exemptions or approvals

In this regulation, a reference to—

(a) a determination, exemption or approval; or

(b) a corresponding determination, exemption or approval;

includes a reference to the determination, exemption or approval as amended.

12 References to amendment of determinations etc.

In this regulation, a reference to the amendment of—

- (a) a determination, exemption or approval; or
- (b) a corresponding determination, exemption or approval;

includes a reference to an amendment by addition, omission or substitution.

Example of an amendment—

the addition of a new condition to an existing administrative determination

13 References to load

For this regulation, all the goods in or on a transport unit being transported on a rail vehicle are a single load, even if the vehicle is transporting more than 1 transport unit.

14 Meaning of *bulk container*

- (1) ***Bulk container*** means a container, with or without a liner or coating, that—
 - (a) has a capacity of 1m³ or more; and
 - (b) is intended for the transport of solid dangerous goods that are in direct contact with the container.
- (2) However, the following are not bulk containers—
 - (a) a large packaging complying with the requirements of chapter 6.6 of the ADG Code;
 - (b) an IBC;
 - (c) a tank;
 - (d) a tank vehicle;

[s 15]

- (e) other packaging complying with the requirements of chapter 6.1 or 6.3 of the ADG Code.

15 Meaning of *intermediate bulk container*

- (1) *Intermediate bulk container* means a rigid or flexible portable packaging for the transport of dangerous goods that complies with the requirements of chapter 6.5 of the ADG Code and that—
 - (a) has a capacity of not more than—
 - (i) for solids of packing group I packed in a composite, fibreboard, flexible, wooden, or rigid plastics container—1500L; or
 - (ii) for solids of packing group I packed in a metal container—3000L; or
 - (iii) for solids or liquids of packing groups II and III—3000L; and
 - (b) is designed for mechanical handling.
- (2) However, rigid or flexible portable packaging complying with the requirements of chapter 6.1, 6.3 or 6.6 of the ADG Code is not an intermediate bulk container.

16 Meaning of *multiple-element gas container*

Multiple-element gas container means—

- (a) multimodal assemblies of cylinders, tubes and bundles of cylinders that are interconnected by a manifold and assembled within a framework; and
- (b) service equipment or structural equipment necessary for the transport of gases in the cylinders and tubes.

17 Meaning of *tank*

- (1) *Tank* means—
 - (a) a receptacle for dangerous goods; and

-
- (b) service equipment or structural equipment that enables the receptacle to transport the goods.
 - (2) However, a receptacle for dangerous goods of UN class 2 is not a tank unless it has a capacity of more than 450L.
 - (3) Also, the following are not tanks—
 - (a) packaging complying with the requirements of chapter 6.1, 6.3 or 6.6 of the ADG Code;

Notes—

- 1 Chapter 6.1 of the ADG Code deals with drums, barrels, jerry cans, boxes, bags and composite packaging.
- 2 Chapter 6.3 of the ADG Code deals with packaging for infectious substances.

- (b) an IBC;
- (c) an MEGC;
- (d) a cylinder;
- (e) a pressure drum;
- (f) a tube;
- (g) a bulk container complying with the requirements of chapter 6.8 of the ADG Code.

18 When dangerous goods are *packed in limited quantities*

- (1) Dangerous goods are *packed in limited quantities* if—
 - (a) the goods are packed in accordance with chapter 3.4 of the ADG Code; and
 - (b) the quantity of dangerous goods in each inner packaging or in each article is not more than the quantity stated, or referred to, in column 7 of the dangerous goods list for the goods.
- (2) For subsection (1)(a), goods can be packed in accordance with chapter 3.4 of the ADG Code only if the chapter permits the goods to be packed in accordance with it under section 3.4.1 of the ADG Code.

[s 19]

Division 3 Instruction and training

19 Instruction and training

- (1) This section applies to any task involved in the transport of dangerous goods, including the following—
 - (a) packing dangerous goods;
 - (b) consigning dangerous goods;
 - (c) loading dangerous goods;
 - (d) unloading dangerous goods;
 - (e) marking packages containing dangerous goods;
 - (f) placarding placard loads;
 - (g) preparing transport documentation;
 - (h) maintaining rail vehicles and equipment used in the transport of dangerous goods;
 - (i) driving a rail vehicle transporting dangerous goods;
 - (j) being the consignee of dangerous goods;
 - (k) following the appropriate procedures as prescribed by this regulation in a dangerous situation.
- (2) A person who is responsible for management or control of a task must not employ, engage or permit someone else (the *worker*) to perform the task unless the worker—
 - (a) has received instruction, and has satisfactorily completed training, specific to the task; or
 - (b) is—
 - (i) receiving instruction and training specific to the task; and
 - (ii) appropriately supervised in doing the task by a person who has received instruction, and has satisfactorily completed training, specific to the task;

to enable the worker to do the task safely and in compliance with this regulation.

Maximum penalty—40 penalty units.

- (3) A person must not manage, control or supervise a task unless the person has received instruction, and has satisfactorily completed training, specific to the task to enable the person to manage, control or supervise another person to perform the task safely and in compliance with this regulation.

Maximum penalty—40 penalty units.

- (4) Subsection (5) applies if a person responsible for managing or controlling a task claims that—
- (a) a person employed, engaged or permitted to do the task; or
 - (b) a person who supervised a person employed, engaged or permitted to do the task;

has received instruction, and has satisfactorily completed training, specific to the task.

- (5) The chief executive may give the person responsible for managing or controlling the task a written notice requiring the person, within 14 days after receiving the notice, to give the chief executive written evidence of the instruction and the satisfactory completion of the training.
- (6) A person given a notice under subsection (5) must comply with the notice, unless the person has a reasonable excuse.

Maximum penalty for subsection (6)—15 penalty units.

[s 20]

Division 4 Goods suspected of being dangerous goods or goods too dangerous to be transported

20 Goods suspected of being dangerous goods or goods too dangerous to be transported

If it is not clear whether goods are dangerous goods or goods too dangerous to be transported, but a person suspects, or ought reasonably to suspect, that they are, the person must not consign or transport them until—

- (a) the goods have been classified in accordance with the ADG Code; or
- (b) a determination has been made that—
 - (i) the goods are or are not dangerous goods; or
 - (ii) the goods are or are not goods too dangerous to be transported.

Maximum penalty—40 penalty units.

Division 5 Determinations

21 Determination about dangerous goods and packaging

- (1) The chief executive may decide that goods are or are not—
 - (a) dangerous goods; or
 - (b) dangerous goods of a particular UN class, UN division or category; or
 - (c) dangerous goods with a particular subsidiary risk; or
 - (d) substances of a particular packing group; or
 - (e) incompatible with particular dangerous goods.
- (2) The chief executive may decide that—

-
- (a) particular goods are or are not too dangerous to be transported; or
 - (b) particular dangerous goods must not be or may be transported in or on the same transport unit as other goods, whether or not dangerous goods; or
 - (c) particular dangerous goods may or may not be transported in particular packaging, despite any prohibition or authorisation in the dangerous goods list.
- (3) A decision under subsection (1) or (2)—
- (a) is a determination for this regulation; and
 - (b) must be made by written notice.

Note—

A notice under subsection (3)(b) is declared to be subordinate legislation under the *Statutory Instruments Regulation 2002*, section 3(3) and schedule 1.

- (4) Subsection (3)(b) does not apply to an administrative determination.

Note—

Section 166(1) provides for administrative determinations being given in writing.

22 Determinations about vehicles, routes, areas etc.

- (1) The chief executive may decide that particular dangerous goods may be or must or must not be transported—
 - (a) using a stated vehicle, or kind of vehicle; or
 - (b) on a stated route; or
 - (c) in or through a stated area; or
 - (d) at a stated time; or
 - (e) in quantities more than a stated amount; or
 - (f) in stated packaging.
- (2) A decision under subsection (1)—

[s 23]

- (a) is a determination for this regulation; and
- (b) must be made by written notice.

Note—

A notice under subsection (2)(b) is declared to be subordinate legislation under the *Statutory Instruments Regulation 2002*, section 3(3) and schedule 1.

- (3) Subsection (2)(b) does not apply to an administrative determination.

Note—

Section 166(1) provides for administrative determinations being given in writing.

23 Administrative determinations

A determination is an administrative determination if the determination—

- (a) is made on the application of a person; and
- (b) applies only to the person.

Note—

Part 16 contains provisions dealing with administrative determinations, including applications for, and amendment of, administrative determinations.

24 Determinations may be subject to conditions

- (1) In making a determination, the chief executive may impose any condition necessary for the safe transport of dangerous goods on the determination.
- (2) A person to whom a determination applies must not contravene a condition of the determination.

Maximum penalty for subsection (2)—40 penalty units.

25 Effect of determinations on contrary obligations under this regulation

- (1) If this regulation imposes an obligation on a person, and the person is authorised or permitted to act contrary to that obligation by a determination, the obligation must be read as if it stated that the person could fulfil the obligation by acting in compliance with the determination.
- (2) In this section—
obligation includes duty and requirement.

26 Register of determinations

- (1) The chief executive must—
 - (a) keep a register of determinations; and
 - (b) with other dangerous goods authorities, keep a central register of corresponding determinations.
- (2) A register kept under subsection (1) may have separate divisions for different kinds of determinations.
- (3) The chief executive must record each determination in the register kept under subsection (1)(a).
- (4) The chief executive must note the amendment, suspension or cancellation of a determination in the register kept under subsection (1)(a).
- (5) In this section—
corresponding determination includes a determination under this regulation that the competent authorities panel has decided should have effect in 1 or more other participating jurisdictions.

27 Records of determinations

The record of a determination in the register kept under section 26(1)(a) must include—

- (a) the provisions of the determination; or

[s 28]

- (b) the following information—
 - (i) for a determination other than an administrative determination—the title of the gazette and the date the determination is gazetted;
 - (ii) the provisions of this regulation, and of the ADG Code, to which the determination relates;
 - (iii) the dangerous goods, equipment, packaging, vehicle or other thing to which the determination relates.

28 Offence to do anything prohibited or regulated by a determination

- (1) If a determination prohibits or regulates the doing of something, a person to whom the determination applies must not do the thing contrary to the determination.

Maximum penalty—40 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) that the person did not know, and could not reasonably have been expected to know, of the determination, or that the determination applied to the person.

Division 6 Non-participating jurisdictions

29 Declaration of non-participating jurisdictions

A State is not a participating jurisdiction if—

- (a) the Australian Transport Council decides the law of the State does not include provisions having the same, or substantially the same, effect as the model legislation under the *National Transport Commission (Model Legislation—Transport of Dangerous Goods by Road or Rail) Regulations 2007*; and
- (b) the Minister, by gazette notice, declares the State is not a participating jurisdiction.

Part 2 Key concepts

30 **Dangerous goods—Act, sch 6, definition *dangerous goods***

- (1) Goods are dangerous goods if—
 - (a) the chief executive has made a determination that the goods are dangerous goods; or
 - (b) the goods satisfy the criteria stated, or referred to, in part 2 of the ADG Code.
- (2) However, goods that satisfy the criteria stated, or referred to, in part 2 of the ADG Code are not dangerous goods if—
 - (a) the chief executive has made a determination that the goods are not dangerous goods; or
 - (b) the goods are described as not subject to the ADG Code in a special provision in chapter 3.3 of the ADG Code that is applied to the goods by column 6 of the dangerous goods list.

31 **Goods too dangerous to be transported—Act, sch 6, definition *goods too dangerous to be transported***

Goods are too dangerous to be transported if—

- (a) they are goods stated or described in appendix A to the ADG Code; or
- (b) the chief executive has made a determination that they are goods too dangerous to be transported; or
- (c) they are goods, other than goods mentioned in paragraph (a) or (b), that are so sensitive or unstable that they can not be safely transported even if the relevant requirements of this regulation and the ADG Code are complied with.

[s 32]

32 UN classes, UN divisions and categories of dangerous goods

In this regulation, the UN class, UN division or category of particular dangerous goods is—

- (a) if a determination that the goods are of a particular UN class, UN division or category is in effect—the UN class, UN division or category stated in the determination; or
- (b) otherwise—the UN class, UN division or category for the goods worked out using the ADG Code.

Notes—

- 1 There are 9 classes of dangerous goods under the UN classification system and some of the classes are divided into divisions and some of the divisions are divided into categories. For example, UN division 6.2 (infectious substances) is divided into—
 - (a) category A (substances transported in a form that, if exposure occurs, can cause permanent disability or life-threatening or fatal disease to humans or animals); and
 - (b) category B (others).
- 2 For the UN class or UN division for dangerous goods listed in the dangerous goods list, see column 3 of the list and any special provision of chapter 3.3 of the ADG Code applied to the goods under column 6 of the list.
- 3 For the category of dangerous goods listed in the dangerous goods list, see part 2 of the ADG Code and any special provision of chapter 3.3 of the code applied to the goods under column 6 of the list.

33 Subsidiary risk

In this regulation, the subsidiary risk of particular dangerous goods is—

- (a) if a determination that the goods have a particular subsidiary risk is in effect—the subsidiary risk stated in the determination; or
- (b) otherwise—the subsidiary risk (if any) for the goods worked out using the ADG Code.

Notes—

- 1 If dangerous goods are able to be assigned to more than one UN class (or more than one UN division), the goods are assigned a subsidiary risk which is the other UN class or classes (or UN division or divisions) to which the goods also belong.
- 2 For the subsidiary risk of dangerous goods listed in the dangerous goods list, see column 4 of the list and any special provision of chapter 3.3 of the ADG Code applied to the goods under column 6 of the list.

34 Packing groups

In this regulation, the packing group of particular dangerous goods is—

- (a) if a determination that the goods are of a particular packing group is in effect—the packing group stated in the determination; or
- (b) otherwise—the packing group (if any) for the goods worked out using the ADG Code.

Notes—

- 1 Dangerous goods are assigned to a packing group to indicate the degree of danger, and the level of containment required for, the goods. The packing groups, and the degree of danger they indicate, are—
 - packing group I (substances presenting high danger)
 - packing group II (substances presenting medium danger)
 - packing group III (substances presenting low danger).
- 2 For the packing group of dangerous goods listed in the dangerous goods list, see column 5 of the list and any special provision of chapter 3.3 of the ADG Code applied to the goods under column 6 of the list.

35 Incompatibility

- (1) Dangerous or other goods are *incompatible* with dangerous goods if—
 - (a) the goods are incompatible with the dangerous goods under chapter 9.1 of the ADG Code; or

[s 36]

- (b) the chief executive has made a determination that the goods are incompatible with the dangerous goods; or
 - (c) when the goods are mixed, or otherwise brought into contact, with the dangerous goods, the goods are likely to interact with the dangerous goods and increase risk because of the interaction.
- (2) Packaging or equipment for use in the transport of dangerous goods is *incompatible* with the dangerous goods if a component of the packaging or equipment that is intended or likely to come into contact with the dangerous goods during transport—
- (a) is likely to interact with the dangerous goods and increase risk because of the interaction; and
 - (b) is not protected from contact under foreseeable circumstances by a protective coating or by another effective way.

Part 3 Transport of dangerous goods to which special provisions apply

36 Application of pt 3

This part applies if a special provision prohibits the transport of dangerous goods or imposes a restriction on the way dangerous goods are to be transported.

37 Definition for pt 3

In this part—

special provision means a special provision of chapter 3.3 of the ADG Code applying to dangerous goods under column 6 of the dangerous goods list.

38 Duty of consignor

A person must not consign dangerous goods for transport if the person knows, or ought reasonably to know, that—

- (a) a special provision applies to the transport of the goods; and
- (b) the transport of the goods does not, or will not, comply with the special provision.

Maximum penalty—20 penalty units.

39 Duty of packer

A person must not pack dangerous goods for transport if the person knows, or ought reasonably to know, that—

- (a) a special provision applies to the transport of the goods; and
- (b) the transport of the goods does not, or will not, comply with the special provision.

Maximum penalty—20 penalty units.

40 Duty of loader

A person must not load dangerous goods on to a rail vehicle for transport if the person knows, or ought reasonably to know, that—

- (a) a special provision applies to the transport of the goods; and
- (b) the transport of the goods does not, or will not, comply with the special provision.

Maximum penalty—20 penalty units.

41 Duty of prime contractor and rail operator

A prime contractor or rail operator must not transport dangerous goods if the prime contractor or rail operator knows, or ought reasonably to know that—

[s 42]

- (a) a special provision applies to the transport of the goods;
and
- (b) the transport of the goods does not comply with the
special provision.

Maximum penalty—20 penalty units.

Part 4 Packaging

Division 1 General

42 Part does not apply to dangerous goods packed in limited quantities

Dangerous goods packed in limited quantities do not need to
be packed as required by this part.

43 References to part 4 of the ADG Code include dangerous goods list requirements

In this part, a reference to dangerous goods being packed in
accordance with a provision in part 4 of the ADG Code must
be read as including a reference to the goods being packed in
accordance with each packing requirement stated for the
goods in the dangerous goods list.

Division 2 Suitability and design of packaging

44 Unsuitability of packaging for transport

- (1) Packaging is *unsuitable* for the transport of dangerous goods
if—
 - (a) it is required to undergo performance tests under part 6
of the ADG Code, and it is not approved packaging; or

-
- (b) it does not meet relevant standards or requirements of part 4 or 6 of the ADG Code (including requirements about inspection, maintenance and repair); or
 - (c) its use, or re-use, for the transport of the goods does not comply with part 4 or 6 of the ADG Code; or
 - (d) its use for the transport of the goods is prohibited by, or does not comply with, a determination; or
 - (e) it is incompatible with the goods; or
 - (f) it is damaged or defective to the extent that it is not safe to use to transport the goods.
- (2) A freight container is also *unsuitable* for use as a bulk container for the transport of dangerous goods if it does not have affixed to it a safety approval plate as required under the International Convention for Safe Containers 1972.

45 Marking packaging

- (1) A person must not apply a marking required by part 6 of the ADG Code on packaging if the packaging is not of a design approved under section 47.

Maximum penalty—40 penalty units.

- (2) A person must not apply a marking mentioned in part 6 of the ADG Code on packaging if the marking is not appropriate for the packaging.

Maximum penalty—40 penalty units.

46 Applications for approval of packaging design

- (1) This section applies to packaging that is required to undergo performance tests under part 6 of the ADG Code.

Examples of packaging required to undergo performance tests under part 6 of the ADG Code—

portable tanks, MEGCs, tanks on tank vehicles, pressure receptacles, aerosol dispensers, IBCs, bulk containers and drums, barrels, jerry cans, boxes, bags, composite packaging

[s 47]

Examples of kinds of performance tests required under part 6 of the ADG Code—

drop, leakproofness, hydraulic and stacking tests

- (2) A person may apply to the chief executive for the approval of a design of packaging to which this section applies for use in the transport of dangerous goods.
- (3) An application for approval must—
 - (a) be made under section 165; and
 - (b) include sufficient information to enable the chief executive to decide the matters mentioned in section 47(1).

47 Approval of packaging design

- (1) The chief executive may, on application under section 46, approve a design of packaging for use in the transport of dangerous goods if the chief executive is satisfied a packaging of the design—
 - (a) will comply with, or is permitted by, part 6 of the ADG Code; and
 - (b) satisfies all the relevant testing and inspection requirements of part 6 of the ADG Code.
- (2) In deciding whether packaging of a particular design satisfies a particular testing requirement, the chief executive may rely on a test certificate or report issued by a recognised testing facility and complying with section 49.
- (3) In giving an approval under subsection (1), the chief executive may impose on the approval any condition about the construction, packing, maintenance or use of a packaging manufactured in accordance with the design necessary for the safe use of the packaging to transport dangerous goods.
- (4) A person must not construct, pack or fail to maintain packaging for use in the transport of dangerous goods, or use packaging to transport dangerous goods, if the person knows, or ought reasonably to know, that—

-
- (a) a condition about the construction, packing, maintenance or use of the packaging was imposed on the approval of the design for the packaging; and
 - (b) the construction, packing, failure to maintain, or use is in contravention of the condition.

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

48 Recognised testing facilities

Each of the following is a *recognised testing facility* for a packaging design type—

- (a) a testing facility registered by NATA to conduct performance tests under part 6 of the ADG Code for the packaging design type;
- (b) if NATA has not registered a testing facility to conduct performance tests of a kind mentioned in paragraph (a)—a testing facility in Australia capable of conducting the tests;
- (c) a facility in a foreign country approved by a public authority of the country to conduct performance tests of a kind mentioned in paragraph (a).

49 Test certificates and reports

- (1) A recognised testing facility may certify in writing that a packaging design type has passed particular performance tests for particular dangerous goods.
- (2) If a performance test is conducted by a testing facility registered by NATA, a test certificate, or report on the test, must—
 - (a) contain the details required under the relevant chapter of part 6 of the ADG Code; and
 - (b) be in the appropriate form used by testing facilities registered by NATA.

[s 50]

- (3) If a performance test is conducted in Australia by a recognised testing facility that is not registered by NATA—
 - (a) the test must be observed by or for the chief executive; and
 - (b) a test certificate, or report on the test, must contain the details required under the relevant chapter of part 6 of the ADG Code.

50 Approval of overpack preparation method

- (1) The chief executive may, on application under section 165, approve a method of preparing an overpack for transport that does not comply with section 5.1.2 of the ADG Code if the chief executive considers that the risk involved in using the method is not greater than the risk involved in using a method complying with the section.
- (2) In giving an approval under subsection (1), the chief executive may impose on the approval any condition about the use of the overpack necessary for the safe use of the overpack to transport dangerous goods.
- (3) A person must not use an overpack to transport dangerous goods if the person knows, or ought reasonably to know, that—
 - (a) a condition about the use of the overpack was imposed on the approval of the method of preparing the overpack; and
 - (b) the use is in contravention of the condition.

Maximum penalty for subsection (3)—40 penalty units.

51 Authorised entity may issue approvals

- (1) The chief executive may authorise an entity to issue approvals under section 47 or 50.
- (2) In giving an authorisation under subsection (1), the chief executive may impose on the authorisation any condition the

chief executive considers appropriate for the issuing of approvals by the entity.

- (3) In issuing an approval, in addition to complying with any condition imposed under subsection (2), the entity must—
 - (a) comply with any relevant requirements of part 6 of the ADG Code about the issuing of the approval; and
 - (b) give the chief executive all of the information mentioned in section 172(b) about the approval.
- (4) If an entity is authorised to issue approvals under this section—
 - (a) sections 46, 47 and 50 apply as if a reference in the sections to the chief executive were a reference to the entity; and
 - (b) part 17, division 1, to the extent that it deals with approvals, applies as if a reference in the division to the chief executive were a reference to the entity.
- (5) An approval issued by an entity under this section—
 - (a) is taken to be an approval issued by the chief executive; and
 - (b) may be amended, suspended or cancelled by the chief executive under the Act.

Note—

See chapter 14, part 3 of the Act.

- (6) The chief executive may withdraw an authorisation given under this section at any time.
- (7) The withdrawal of an authorisation under subsection (6) does not affect an approval issued by the entity before the withdrawal took effect.

[s 52]

Division 3 Prohibition on the sale or supply of noncompliant packaging

52 Offence to sell or supply noncompliant packaging

A person must not sell, supply, or offer to sell or supply, packaging for use in the transport of particular dangerous goods unless—

- (a) it is packaging of a design that has been approved under section 47, and it is marked in accordance with part 6 (or, if applicable, chapter 3.4) of the ADG Code, and, according to the marking, its use is appropriate for the goods; or
- (b) it complies with the relevant requirements of parts 4 and 6 (or, if applicable, chapter 3.4) of the ADG Code (including any relevant marking requirements) and its use is appropriate for the goods.

Maximum penalty—40 penalty units.

Division 4 Offences about general packaging

53 Definition for div 4

In this division—

general packaging means all packaging (including large packagings and IBCs) other than portable tanks, demountable tanks, MEGCs, bulk containers, freight containers, tanks on tank vehicles and overpacks.

54 Duty of consignor

A person must not consign dangerous goods for transport in general packaging if the person knows, or ought reasonably to know, that—

- (a) the packaging is unsuitable for the transport of the goods; or

- (b) the goods have not been packed in the packaging in accordance with a relevant provision of part 4 of the ADG Code.

Maximum penalty—40 penalty units.

55 Duties of packer

- (1) A person must not pack dangerous goods for transport in general packaging if the person knows, or ought reasonably to know, that the packaging is unsuitable for the transport of the goods.

Maximum penalty—40 penalty units.

- (2) A person must not pack dangerous goods for transport in general packaging in a way that the person knows, or ought reasonably to know, does not comply with a relevant provision of part 4 of the ADG Code.

Maximum penalty—40 penalty units.

56 Duty of loader

A person must not load dangerous goods that are in general packaging on to a rail vehicle for transport if the person knows, or ought reasonably to know, that the packaging is damaged or defective to the extent that it is not safe to use to transport the goods.

Maximum penalty—40 penalty units.

57 Duty of prime contractor and rail operator

A prime contractor or rail operator must not transport dangerous goods in general packaging if the prime contractor or rail operator knows, or ought reasonably to know, that the packaging is damaged or defective to the extent that it is not safe to use to transport the goods.

Maximum penalty—40 penalty units.

[s 58]

Division 5 Offences about other packaging

58 Definition for div 5

In this division—

other packaging means portable tanks, demountable tanks, MEGCs, bulk containers, freight containers and tanks on tank vehicles.

59 Approval required for attaching compliance plate

A person must not attach a compliance plate, or something that purports to be a compliance plate, to a tank, MEGC or tank vehicle unless the tank, MEGC or tank vehicle is approved under section 47.

Maximum penalty—30 penalty units.

60 Duties of manufacturers about compliance plates for portable tanks, MEGCs and tank vehicles

- (1) A person who manufactures a portable tank or an MEGC for use in the transport of dangerous goods must attach a compliance plate to the tank or MEGC in accordance with chapter 6.7 of the ADG Code.

Maximum penalty—40 penalty units.

- (2) Subsection (1) does not apply to a person who manufactures a portable tank if—
 - (a) chapter 6.7 of the ADG Code permits the marking of the tank instead of the attachment of a compliance plate; and
 - (b) the tank is marked as required by that chapter.
- (3) A person who manufactures a tank vehicle for use in the transport of dangerous goods must attach a compliance plate

to the vehicle in accordance with section 6.9.2.2 of the ADG Code.

Maximum penalty for subsection (3)—40 penalty units.

61 Duty of owners of portable tanks, demountable tanks, MEGCs and tank vehicles

The owner of a portable tank, a demountable tank, an MEGC or a tank vehicle must not use the tank, MEGC or tank vehicle, or permit the tank, MEGC or tank vehicle to be used, to transport dangerous goods if the tank, MEGC, or the tank on the tank vehicle, is unsuitable for the transport of the goods.

Maximum penalty—40 penalty units.

62 Duties of consignor

- (1) A person must not consign dangerous goods for transport in other packaging provided by the person if—
 - (a) the packaging is unsuitable for the transport of the goods; or
 - (b) the goods have not been packed in the packaging in accordance with a relevant provision of part 4 of the ADG Code.

Maximum penalty—40 penalty units.

- (2) A person must not consign dangerous goods for transport in other packaging that was provided by another person if—
 - (a) the packaging is unsuitable for the transport of the goods; or
 - (b) the goods have not been packed in the packaging in accordance with a relevant provision of part 4 of the ADG Code.

Maximum penalty—40 penalty units.

[s 63]

63 Duties of packer

- (1) A person must not pack dangerous goods for transport in other packaging if the person knows, or ought reasonably to know, that the packaging is unsuitable for the transport of the goods.

Maximum penalty—40 penalty units.

- (2) A person must not pack dangerous goods for transport in other packaging in a way that the person knows, or ought reasonably to know, does not comply with a relevant provision of part 4 of the ADG Code.

Maximum penalty—40 penalty units.

64 Duty of loader

A person must not load dangerous goods that are in other packaging on to a rail vehicle for transport if the person knows, or ought reasonably to know, that the packaging is unsuitable for the transport of the goods.

Maximum penalty—40 penalty units.

65 Duties of prime contractor and rail operator

- (1) A prime contractor or rail operator must not transport dangerous goods in other packaging provided by the prime contractor or the rail operator if—

- (a) the packaging is unsuitable for the transport of the goods; or
- (b) the goods have not been packed in the packaging in accordance with a relevant provision of part 4 of the ADG Code.

Maximum penalty—40 penalty units.

- (2) A prime contractor or rail operator must not transport dangerous goods in other packaging provided by another person if the prime contractor or the rail operator knows, or ought reasonably to know, that—

-
- (a) the packaging is unsuitable for the transport of the goods; or
 - (b) the goods have not been packed in the packaging in accordance with a relevant provision of part 4 of the ADG Code.

Maximum penalty—40 penalty units.

66 Duties of driver

- (1) A person must not drive a rail vehicle transporting dangerous goods in bulk by rail in a bulk container or freight container if the person knows, or ought reasonably to know, that the container is damaged or defective to the extent that it is not safe to use it to transport the goods.

Maximum penalty—20 penalty units.

- (2) A person must not drive a rail vehicle transporting dangerous goods in other packaging if the person knows, or ought reasonably to know, that—
 - (a) the packaging is unsuitable for the transport of the goods; or
 - (b) the goods have not been packed in the packaging in accordance with a relevant provision of part 4 of the ADG Code.

Maximum penalty—40 penalty units.

Division 6 Offences about overpacks

67 Duty of consignor

A person must not consign dangerous goods for transport in an overpack if the preparation of the overpack and its contents does not comply with either—

- (a) section 5.1.2 of the ADG Code; or

[s 68]

(b) an approval under section 50.

Maximum penalty—20 penalty units.

68 Duty of packer

A person must not pack dangerous goods for transport in an overpack if the person knows, or ought reasonably to know, that the packing of the packages into the overpack, or the preparation of the overpack or its contents, does not comply with either—

(a) section 5.1.2 of the ADG Code; or

(b) an approval under section 50.

Maximum penalty—20 penalty units.

69 Duty of loader

A person must not load dangerous goods in an overpack on to a rail vehicle for transport if the person knows, or ought reasonably to know, that the preparation of the overpack and its contents does not comply with either—

(a) section 5.1.2 of the ADG Code; or

(b) an approval under section 50.

Maximum penalty—20 penalty units.

70 Duty of prime contractor and rail operator

A prime contractor or rail operator must not transport dangerous goods in an overpack if the prime contractor or the rail operator knows, or ought reasonably to know, that the preparation of the overpack and its contents does not comply with either—

(a) section 5.1.2 of the ADG Code; or

(b) an approval under section 50.

Maximum penalty—20 penalty units.

71 Duty of driver

A person must not drive a rail vehicle transporting dangerous goods in an overpack if the person knows, or ought reasonably to know, that the preparation of the overpack and its contents does not comply with either—

- (a) section 5.1.2 of the ADG Code; or
- (b) an approval under section 50.

Maximum penalty—15 penalty units.

Division 7 Chief executive's performance testing powers

72 Requiring production of packaging for testing

- (1) This section applies to a person who—
 - (a) is—
 - (i) a manufacturer of packaging used, or intended to be used, to transport dangerous goods; or
 - (ii) the consignor or rail operator for the transport of dangerous goods; and
 - (b) has possession of, or control over, packaging of a design type used, or intended to be used, to transport dangerous goods.
- (2) The chief executive may, by signed notice, require the person to produce packaging manufactured or used by the person for performance testing to the chief executive or another person nominated in the notice (the *nominated person*).
- (3) The person must produce the packaging to the chief executive or nominated person within 14 days after the day the notice is given, unless before the end of that period the person delivers the packaging to another person for performance testing under an agreement with that other person.

Maximum penalty for subsection (3)—15 penalty units.

[s 73]

73 Requiring evidence of performance tests

- (1) This section applies to a person who is—
 - (a) a manufacturer of packaging used, or intended to be used, to transport dangerous goods; or
 - (b) a consignor for the transport of packaged dangerous goods.
- (2) The chief executive may, by signed notice, require the person to produce written evidence that a packaging design type manufactured or used by the person has passed performance tests required under part 6 of the ADG Code.
- (3) The person must produce the evidence to the chief executive within 14 days after the day the notice is given.
Maximum penalty—15 penalty units.
- (4) A test certificate or report under section 49 is evidence for this section.

Part 5 Consignment procedures

Division 1 Marking and labelling

74 Meaning of *appropriately marked*

- (1) A receptacle, other than a transport unit or an overpack, that has a capacity of more than 500 kilograms or litres is ***appropriately marked*** if it is marked and labelled in accordance with chapters 5.2 and 5.3.3 of the ADG Code.
- (2) Another package of dangerous goods, other than an overpack, is ***appropriately marked*** if it is marked and labelled in accordance with chapter 5.2 of the ADG Code.
- (3) An overpack is ***appropriately marked*** if it is marked and labelled in accordance with section 5.1.2 of the ADG Code.

- (4) A package of dangerous goods packed in limited quantities is also *appropriately marked* if it is marked and labelled in accordance with chapter 3.4 of the ADG Code.
- (5) A package of dangerous goods to be transported as a retail distribution load is also *appropriately marked* if it is marked and labelled in accordance with chapter 7.3 of the ADG Code.

75 Duties of consignor

- (1) A person must not consign dangerous goods for transport in a package if the package is not appropriately marked.

Maximum penalty—

- (a) for large packaging or an overpack—20 penalty units; or
- (b) in any other case—7½ penalty units.

- (2) A person must not consign dangerous goods for transport in a package if a marking or label on the package about its contents is false or misleading in a material particular.

Maximum penalty—

- (a) for large packaging or an overpack—20 penalty units; or
- (b) in any other case—7½ penalty units.

- (3) A person must not consign goods for transport in a package that does not contain dangerous goods but is marked or labelled as if it contained dangerous goods.

Maximum penalty—

- (a) for large packaging or an overpack—20 penalty units; or
- (b) in any other case—7½ penalty units.

76 Duties of packer

- (1) A person must not pack dangerous goods for transport in a package if the person knows, or ought reasonably to know, that the package is not, or will not be once the package is ready to be transported, appropriately marked.

[s 77]

Maximum penalty—

- (a) for large packaging or an overpack—20 penalty units; or
 - (b) in any other case—7½ penalty units.
- (2) A person who packs dangerous goods for transport in a package must not mark or label the package with a marking or label about its contents that the person knows, or ought reasonably to know, is false or misleading in a material particular.

Maximum penalty—

- (a) for large packaging or an overpack—20 penalty units; or
 - (b) in any other case—7½ penalty units.
- (3) A person who packs goods for transport in a package must not mark or label the package as if it contained dangerous goods if the person knows, or ought reasonably to know, that it does not contain dangerous goods.

Maximum penalty—

- (a) for large packaging or an overpack—20 penalty units; or
- (b) in any other case—7½ penalty units.

77 Duties of prime contractor and rail operator

- (1) A prime contractor or rail operator must not transport goods in a package if the prime contractor or the rail operator knows, or ought reasonably to know, that—
- (a) the goods are dangerous goods; and
 - (b) the package is not appropriately marked.

Maximum penalty—

- (a) for large packaging or an overpack—20 penalty units; or
 - (b) in any other case—7½ penalty units.
- (2) A prime contractor or rail operator must not transport dangerous goods in a package if the prime contractor or the rail operator knows, or ought reasonably to know, that a

marking or label on the package about its contents is false or misleading in a material particular.

Maximum penalty—

- (a) for large packaging or an overpack—20 penalty units; or
 - (b) in any other case—7¹/₂ penalty units.
- (3) A prime contractor or rail operator must not transport goods in a package that is marked or labelled as if it contained dangerous goods if the prime contractor or the rail operator knows, or ought reasonably to know, that the package does not contain dangerous goods.

Maximum penalty—

- (a) for large packaging or an overpack—20 penalty units; or
- (b) in any other case—7¹/₂ penalty units.

Division 2 Placarding

78 When load must be placarded

- (1) A load of dangerous goods must be placarded if—
- (a) it contains—
 - (i) dangerous goods in a receptacle with a capacity of more than 500L; or
 - (ii) more than 500kg of dangerous goods in a receptacle; or
 - (b) it contains an aggregate quantity of dangerous goods of 250 or more and those goods include—
 - (i) dangerous goods of UN division 2.1 that are not aerosols; or
 - (ii) dangerous goods of UN division 2.3; or
 - (iii) dangerous goods of packing group I; or

[s 79]

- (c) it contains dangerous goods of category A of UN division 6.2; or
 - (d) it contains an aggregate quantity of dangerous goods of UN division 6.2 (other than category A) of 10 or more; or
 - (e) it contains an aggregate quantity of dangerous goods of 1000 or more.
- (2) However, a retail distribution load complying with chapter 7.3 of the ADG Code is not a load that must be placarded.

79 Meaning of *placards* and *appropriately placarded*

- (1) A person *placards* a load of dangerous goods if the person affixes, stencils, prints or places a placard about the load on any thing that is being, or that is to be, used to transport the load.
- (2) A placard load is *appropriately placarded* if it is placarded in accordance with chapter 5.3 of the ADG Code.
- (3) In this section—
placard means—
 - (a) a label within the meaning of the ADG Code; or
 - (b) an emergency information panel within the meaning of the ADG Code.

80 Duties of consignor

- (1) A person must not consign a placard load for transport if the load is not appropriately placarded.
Maximum penalty—40 penalty units.
- (2) A person must not consign a placard load for transport if the placarding of the load is false or misleading in a material particular.
Maximum penalty—40 penalty units.

-
- (3) A person must not consign goods for transport in or on a transport unit that does not contain a placard load but is placarded as if it contained a placard load.

Maximum penalty—40 penalty units.

81 Duties of loader

- (1) A person must not load dangerous goods on to a rail vehicle for transport if the person knows, or ought reasonably to know, that—

- (a) the load is a placard load; and
- (b) the load is not appropriately placarded.

Maximum penalty—40 penalty units.

- (2) A person who loads a placard load on to a rail vehicle for transport must not placard the load with placarding that the person knows, or ought reasonably to know, is false or misleading in a material particular.

Maximum penalty—40 penalty units.

- (3) A person who loads goods on to a rail vehicle for transport must not placard the load as if it was a placard load if the person knows, or ought reasonably to know, that the load is not a placard load.

Maximum penalty—40 penalty units.

82 Duties of prime contractor and rail operator

- (1) A prime contractor or rail operator must not transport a load of dangerous goods if the prime contractor or the rail operator knows, or ought reasonably to know, that—

- (a) the load is a placard load; and
- (b) the load is not appropriately placarded.

Maximum penalty—40 penalty units.

- (2) A prime contractor or rail operator must not transport a placard load if the prime contractor or the rail operator knows,

[s 83]

or ought reasonably to know, that the placarding of the load is false or misleading in a material particular.

Maximum penalty—40 penalty units.

- (3) A prime contractor or rail operator must not use a transport unit that is placarded as if it contained a placard load if the prime contractor or the rail operator knows, or ought reasonably to know, that the transport unit does not contain a placard load.

Maximum penalty—40 penalty units.

Part 6 **Safety standards for vehicles and equipment**

83 **Duty of owner**

The owner of a rail vehicle must not use the vehicle, or permit it to be used, to transport dangerous goods if the vehicle or its equipment does not comply with chapter 4.4 of the ADG Code.

Maximum penalty—40 penalty units.

84 **Duty of consignor**

A person must not consign dangerous goods for transport in or on a rail vehicle if the person knows, or ought reasonably to know, that the vehicle or its equipment does not comply with chapter 4.4 of the ADG Code.

Maximum penalty—40 penalty units.

85 **Duty of loader**

A person must not load dangerous goods on to a rail vehicle for transport if the person knows, or ought reasonably to

know, that the vehicle or its equipment does not comply with chapter 4.4 of the ADG Code.

Maximum penalty—20 penalty units.

86 Duty of prime contractor and rail operator

A prime contractor or rail operator must not use a rail vehicle to transport dangerous goods if the vehicle or its equipment does not comply with chapter 4.4 of the ADG Code.

Maximum penalty—40 penalty units.

Part 7 Transport operations for particular dangerous goods

Division 1 Self-reactive substances, organic peroxides and particular other substances

87 Application of div 1

This division applies to the following types of dangerous goods—

- (a) gases of UN class 2;
- (b) self-reactive substances of UN division 4.1;
- (c) organic peroxides of UN division 5.2;
- (d) other substances for which—
 - (i) the proper shipping name, within the meaning of the ADG Code, contains the word ‘stabilised’; and
 - (ii) the self-accelerating decomposition temperature (as worked out under part 2 of the ADG Code)

[s 88]

when presented for transport in a packaging is 50°C or lower;

- (e) toxic substances of UN division 6.1 or subsidiary risk 6.1;
- (f) infectious substances of UN division 6.2;
- (g) dangerous when wet substances of UN division 4.3.

88 Duty of consignor

A person must not consign dangerous goods to which this division applies for transport in or on a transport unit if the person knows, or ought reasonably to know, that the goods are not loaded or stowed, or can not be transported or unloaded, in accordance with chapter 7.1 of the ADG Code.

Maximum penalty—20 penalty units.

89 Duty of loader

A person must not load dangerous goods to which this division applies that are in or on a transport unit on to a rail vehicle for transport other than in accordance with chapter 7.1 of the ADG Code.

Maximum penalty—20 penalty units.

90 Duties of prime contractor and rail operator

- (1) A prime contractor or rail operator must not transport dangerous goods to which this division applies if the prime contractor or the rail operator knows, or ought reasonably to know, that the transport does not comply with chapter 7.1 of the ADG Code.

Maximum penalty—20 penalty units.

- (2) A prime contractor or rail operator responsible for the transport of 1 or more packages of infectious substances of UN division 6.2 who becomes aware of damage to, or leakage

from, the package or any of the packages must comply with section 7.1.7.2.2 of the ADG Code.

Maximum penalty—20 penalty units.

Division 2 Goods too dangerous to be transported

91 Application of div 2

This division applies to goods too dangerous to be transported.

Note—

Section 458B of the Act provides that a person must not consign for transport by rail goods too dangerous to be transported.

92 Duty of loader

A person must not load goods for transport in or on a transport unit if the person knows, or ought reasonably to know, that the goods are goods too dangerous to be transported.

Maximum penalty—20 penalty units.

93 Duty of prime contractor and rail operator

A prime contractor or rail operator must not transport goods if the prime contractor or the rail operator knows, or ought reasonably to know, that the goods are goods too dangerous to be transported.

Maximum penalty—20 penalty units.

94 Duty of driver

A person must not drive a rail vehicle transporting goods if the person knows, or ought reasonably to know, that the goods are goods too dangerous to be transported.

Maximum penalty—13 penalty units.

Part 8 Stowage and restraint

95 Duties of consignor

- (1) A person must not consign dangerous goods for transport in or on a rail vehicle if the person knows, or ought reasonably to know, that the goods or their packaging are not, or will not be, loaded, stowed and restrained in accordance with chapter 8.1 of the ADG Code.

Maximum penalty—20 penalty units.

- (2) A person must not consign dangerous goods for transport in or on a transport unit if the person knows, or ought reasonably to know, that the transport unit is not, or will not be, restrained in accordance with chapter 8.2 of the ADG Code.

Maximum penalty—20 penalty units.

96 Duties of loader

- (1) A person who loads dangerous goods for transport in or on a rail vehicle must load, stow and restrain the goods and their packaging in accordance with chapter 8.1 of the ADG Code.

Maximum penalty—20 penalty units.

- (2) A person who loads for transport in or on a rail vehicle dangerous goods that are in or on a transport unit must restrain the transport unit in accordance with chapter 8.2 of the ADG Code.

Maximum penalty—20 penalty units.

97 Duties of prime contractor and rail operator

- (1) A prime contractor or rail operator must not transport dangerous goods in or on a rail vehicle if the prime contractor or the rail operator knows, or ought reasonably to know, that the goods or their packaging have not been loaded or stowed, or are not restrained, in accordance with chapter 8.1 of the ADG Code.

Maximum penalty—20 penalty units.

- (2) A prime contractor or rail operator must not transport dangerous goods in or on a transport unit if the prime contractor or the rail operator knows, or ought reasonably to know, that the goods or their packaging are not restrained in accordance with chapter 8.2 of the ADG Code.

Maximum penalty—20 penalty units.

Part 9 Segregation, separation and marshalling

Division 1 Application

98 Application of pt 9

- (1) This part applies to—
 - (a) the transport of a placard load; and
 - (b) the transport of a load of dangerous goods that is not a placard load if—
 - (i) the load contains dangerous goods of UN division 2.3, UN class 6 or UN class 8, or dangerous goods that have a subsidiary risk of 6.1 or 8; and
 - (ii) the load is being transported, or is to be transported, with food or food packaging.
- (2) Dangerous goods packed in limited quantities do not need to comply with this part.

99 Exception for particular goods for driver's personal use

- (1) Despite sections 101 to 105, food and food packaging may be transported in or on a rail vehicle with dangerous goods if the

[s 100]

food or packaging is in the driver's cab of the vehicle and is for the driver's personal use.

- (2) Despite sections 101 to 105, a fire-risk substance may be transported in or on a rail vehicle with dangerous goods if the fire-risk substance is in the driver's cab of the vehicle and is for the driver's personal use.

- (3) In this section—

fire-risk substance means a readily ignitable solid substance.

Examples—

hay, sawdust, waste paper, wood chips

Division 2 Segregation

100 Loads on rail wagons

- (1) If dangerous goods and other goods that are incompatible with the dangerous goods are transported in separate closed freight containers, bulk containers or tanks on a rail wagon, or on separate load platforms or in separate wells of an articulated rail wagon, the dangerous goods and the other goods are taken to be segregated in accordance with part 9 of the ADG Code.
- (2) However, the dangerous goods and other goods are taken not to be segregated in accordance with part 9 of the ADG Code if, under that part or a determination, the dangerous goods are too dangerous to be transported on the same rail wagon as other goods.

101 Duty of consignor

A person must not consign dangerous goods for transport in or on a rail vehicle if the person knows, or ought reasonably to know, that—

- (a) the vehicle is, in the same journey, transporting goods that are incompatible with the dangerous goods; and

-
- (b) the dangerous goods will not be segregated from the incompatible goods in accordance with either—
 - (i) part 9 of the ADG Code; or
 - (ii) an approval under section 106.

Maximum penalty—40 penalty units.

102 Duty of loader

A person must not load dangerous goods for transport in or on a rail vehicle if the person knows, or ought reasonably to know, that—

- (a) the vehicle is, in the same journey, transporting goods that are incompatible with the dangerous goods; and
- (b) the dangerous goods will not be segregated from the incompatible goods in accordance with either—
 - (i) part 9 of the ADG Code; or
 - (ii) an approval under section 106.

Maximum penalty—40 penalty units.

103 Duty of prime contractor

A prime contractor must not use a rail vehicle to transport dangerous goods if the prime contractor knows, or ought reasonably to know, that—

- (a) the vehicle is, in the same journey, transporting goods that are incompatible with the dangerous goods; and
- (b) the dangerous goods are not segregated from the incompatible goods in accordance with either—
 - (i) part 9 of the ADG Code; or
 - (ii) an approval under section 106.

Maximum penalty—40 penalty units.

[s 104]

104 Duty of rail operator

A rail operator must not use a rail vehicle to transport dangerous goods if the rail operator knows, or ought reasonably to know, that—

- (a) the vehicle is, in the same journey, transporting goods that are incompatible with the dangerous goods; and
- (b) the dangerous goods are not segregated from the incompatible goods in accordance with either—
 - (i) part 9 of the ADG Code; or
 - (ii) any approval under section 106.

Maximum penalty—40 penalty units.

105 Duty of driver

A person must not drive a rail vehicle transporting dangerous goods if the person knows, or ought reasonably to know, that—

- (a) the vehicle is, in the same journey, transporting goods that are incompatible with the dangerous goods; and
- (b) the dangerous goods are not segregated from the incompatible goods in accordance with either—
 - (i) part 9 of the ADG Code; or
 - (ii) an approval under section 106.

Maximum penalty—13 penalty units.

106 Approval of methods of segregation

- (1) The chief executive may, on application made under section 165, approve a method of segregation not complying with part 9 of the ADG Code for transporting dangerous goods and goods that are incompatible with the dangerous goods, if the chief executive considers that—

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- (a) it is impracticable to segregate the dangerous goods from the incompatible goods by a segregation device, or method of segregation, complying with that part; and
 - (b) the risk involved in using the method to transport the goods is not greater than the risk involved in using a device or method complying with that part to transport the goods.
- (2) In giving an approval under subsection (1), the chief executive may impose on the approval any condition necessary for the safe transport of dangerous goods.
 - (3) A person to whom an approval has been given under this section must not contravene a condition of the approval.

Maximum penalty for subsection (3)—40 penalty units.

107 Approval of design of type II segregation devices

- (1) This section provides for the approval of the design of a type II segregation device for the purposes of chapter 6.11 of the ADG Code.
- (2) A person may apply to the chief executive for the approval of a design for a type II segregation device for use in the transport of dangerous goods.
- (3) An application for approval must—
 - (a) be made under section 165; and
 - (b) include sufficient information to enable the chief executive to decide whether the design complies with chapter 6.11 of the ADG Code.
- (4) The chief executive may, on application under subsection (3), approve a design for a type II segregation device if the design complies with chapter 6.11 of the ADG Code.
- (5) In giving an approval under subsection (4), the chief executive may impose on the approval any condition necessary for the safe transport of dangerous goods.

[s 108]

- (6) A person to whom an approval has been given under this section must not contravene a condition of the approval.

Maximum penalty for subsection (6)—40 penalty units.

Division 3 Separation and marshalling

108 Duties of rail operator

- (1) A rail operator must not transport dangerous goods in or on a train with other goods if the rail operator knows, or ought reasonably to know—

- (a) the other goods are incompatible with the dangerous goods; and
- (b) the dangerous goods have not been separated from the other goods by the minimum distances stated in either—
 - (i) part 9 of the ADG Code; or
 - (ii) an approval under section 110.

Maximum penalty—30 penalty units.

- (2) A rail operator must not transport dangerous goods in or on a rail vehicle if the rail operator knows, or ought reasonably to know, the rail wagons comprising the rail vehicle have not been marshalled in accordance with either—

- (a) part 9 of the ADG Code; or
- (b) an approval under section 110.

Maximum penalty—30 penalty units.

109 Duties of loader

- (1) A person must not load dangerous goods in or on a rail vehicle with other goods if the person knows, or ought reasonably to know—

- (a) the other goods are incompatible with the dangerous goods; and

-
- (b) the dangerous goods have not been separated from the other goods by the minimum distances stated in either—
 - (i) part 9 of the ADG Code; or
 - (ii) an approval under section 110.

Maximum penalty—15 penalty units.

- (2) A person must not load dangerous goods in or on a rail vehicle if the person knows, or ought reasonably to know, the rail wagons comprising the rail vehicle have not been marshalled in accordance with either—
 - (a) part 9 of the ADG Code; or
 - (b) an approval under section 110.

Maximum penalty—15 penalty units.

110 Separation and marshalling approval

- (1) The chief executive may, on application under section 165, approve a way of separating goods, or a way of marshalling of rail wagons, not complying with part 9 of the ADG Code for the transporting of dangerous goods and other goods that are incompatible with the dangerous goods, if the chief executive decides—
 - (a) use of the way would not increase risk; or
 - (b) it is impracticable to separate the goods or marshal the rail wagons by a way of separation or marshalling stated in the part.
- (2) In giving an approval under subsection (1), the chief executive may impose on the approval any condition necessary for the safe transport of dangerous goods.
- (3) A person to whom an approval has been given under this section must not contravene a condition of the approval.

Maximum penalty for subsection (3)—40 penalty units.

Part 10 Carriage of dangerous goods on passenger trains

111 Duty of prime contractor and rail operator

A prime contractor or rail operator must not transport a quantity of dangerous goods of a particular type in or on a passenger train, if—

- (a) the prime contractor or the rail operator knows, or ought reasonably to know, the quantity exceeds the quantity of dangerous goods of that type that may be transported in or on a passenger train as stated in part 9 of the ADG Code; and
- (b) the goods are not being transported in or on a part of the train used solely for the carriage of baggage, parcels or freight.

Maximum penalty—30 penalty units.

112 Duties of passenger

- (1) A passenger on a train must not transport dangerous goods in a part of the train to which passengers have access, unless—

- (a) the transport of the goods is authorised by the relevant rail operator; or
- (b) the goods are reasonably necessary for use by the passenger on the passenger's journey.

Maximum penalty—30 penalty units.

- (2) A passenger on a train must not transport dangerous goods of a particular type in a part of the train used solely for the carriage of baggage, parcels or freight, unless—

- (a) the quantity is not more than the quantity of dangerous goods of that type that may be transported in or on a passenger train as stated in part 9 of the ADG Code; and

- (b) the transport of the goods is authorised by the relevant rail operator.

Maximum penalty—30 penalty units.

Part 11 Bulk transfer of dangerous goods

Division 1 General

113 Meaning of *bulk transfer*

In this part—

bulk transfer means to transfer liquid, solid or gaseous dangerous goods—

- (a) by gravity, pump or pressure differential; and
- (b) using pipework or a hose; and
- (c) into or out of—
 - (i) a tank vehicle; or
 - (ii) a portable tank, demountable tank, bulk container, pressure drum, tube, MEGC or IBC that is on a vehicle.

Division 2 Equipment and transfer

114 Definitions for div 2

In this division—

prescribed dangerous goods means—

- (a) dangerous goods of UN division 2.1 or subsidiary risk 2.1; or

[s 115]

(b) dangerous goods of UN class 3 or subsidiary risk 3.

prescribed way means—

(a) for the bulk transfer of prescribed dangerous goods—a way that—

(i) complies with chapter 10.2 of the ADG Code, to the extent the chapter is not inconsistent with subparagraph (ii); and

(ii) ensures the distance between a source of ignition and any hose connection point is at least—

(A) for dangerous goods of UN division 2.1 or subsidiary risk 2.1—10m; or

(B) for dangerous goods of UN class 3 or subsidiary risk 3—8m; or

(b) for the bulk transfer of other dangerous goods—a way that complies with chapter 10.2 of the ADG Code.

115 Duties of transferor—hose assemblies

(1) A person must not use a hose assembly for the bulk transfer of dangerous goods if the person knows, or ought reasonably to know, that the assembly is damaged or defective to the extent that it is not safe to use to transfer the goods.

Maximum penalty—30 penalty units.

(2) A person must not use a hose assembly for the bulk transfer of dangerous goods if the person knows, or ought reasonably to know, that the hose assembly—

(a) has not been constructed, assembled or maintained in accordance with chapter 10.1 of the ADG Code; or

(b) has not been inspected or tested at the intervals, or in the way, required under that chapter; or

(c) did not satisfy a test under that chapter.

Maximum penalty—40 penalty units.

116 Duties of transferor—general

- (1) A person must not bulk transfer dangerous goods unless the goods are transferred—
- (a) in the prescribed way; and
 - (b) in a way that eliminates risk or, if it is not possible to eliminate risk, that minimises risk to the greatest practicable extent.

Maximum penalty—20 penalty units.

- (2) A person must not bulk transfer dangerous goods if the person knows, or ought reasonably to know, that—
- (a) the receptacle to which the goods are being or are to be transferred, or the equipment used or to be used to transfer the goods, is incompatible with the dangerous goods; or
 - (b) the receptacle to which the goods are being or are to be transferred contains goods that are incompatible with the dangerous goods.

Maximum penalty—20 penalty units.

- (3) If dangerous goods leak, spill or escape during a bulk transfer, the person transferring the goods—
- (a) must immediately stop transferring the goods; and
 - (b) must take steps to eliminate risk or, if it is not possible to eliminate risk, to minimise risk to the greatest practicable extent; and
 - (c) must not start transferring the goods again until the conditions causing the leak, spill or escape have been rectified.

Maximum penalty—20 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (1) that the person complied with that subsection as far as practicable.

[s 117]

- (5) Subsection (4) does not apply in relation to a contravention of a requirement mentioned in section 114, definition *prescribed way*, paragraph (a)(ii).

117 Duties of occupier

- (1) The occupier of premises where the bulk transfer of dangerous goods occurs must not keep on the premises a hose assembly for use in the transfer (other than a hose assembly brought on to the premises on the vehicle involved in the transfer) that—
- (a) has not been constructed, assembled and maintained in accordance with chapter 10.1 of the ADG Code; or
 - (b) has not been inspected and tested at the intervals, and in the way, required under that chapter; or
 - (c) did not satisfy a test under that chapter.

Maximum penalty—20 penalty units.

- (2) The occupier of premises where the bulk transfer of dangerous goods occurs must not transfer the goods, or permit the goods to be transferred, other than—
- (a) in the prescribed way; and
 - (b) in a way that eliminates risk or, if it is not possible to eliminate risk, that minimises risk to the maximum extent that is practicable.

Maximum penalty—40 penalty units.

- (3) The occupier of premises where the bulk transfer of dangerous goods occurs must keep, in accordance with section 10.1.3.4 of the ADG Code, accurate records of all maintenance work, and each inspection and test, performed on the hose assembly.

Maximum penalty—7½ penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (2) that the person complied with that subsection as far as practicable.

-
- (5) Subsection (4) does not apply in relation to a contravention of a requirement mentioned in section 114, definition *prescribed way*, paragraph (a)(ii).

118 Duties of prime contractor

- (1) A prime contractor must not use, or permit to be used, a hose assembly for the bulk transfer of dangerous goods (other than a hose assembly for which the prime contractor is not responsible) that—
- (a) has not been constructed, assembled and maintained in accordance with chapter 10.1 of the ADG Code; or
 - (b) has not been inspected and tested at the intervals, and in the way, required under that chapter; or
 - (c) did not satisfy a test under that chapter.

Maximum penalty—20 penalty units.

- (2) A prime contractor must not bulk transfer, or permit to be bulk transferred, dangerous goods unless the goods are transferred—
- (a) in the prescribed way; and
 - (b) in a way that eliminates risk or, if it is not possible to eliminate risk, that minimises risk to the greatest practicable extent.

Maximum penalty—40 penalty units.

- (3) The prime contractor must keep, in accordance with section 10.1.3.4 of the ADG Code, accurate records of all maintenance work, and each inspection and test, performed on the hose assembly.

Maximum penalty—7½ penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (2) that the prime contractor complied with that subsection as far as practicable.

[s 119]

- (5) Subsection (4) does not apply in relation to a contravention of a requirement mentioned in section 114, definition *prescribed way*, paragraph (a)(ii).

119 Duty of rail operator

A rail operator must not use, or permit to be used, a hose assembly for the bulk transfer of the dangerous goods (other than a hose assembly for which the rail operator is not responsible) that—

- (a) has not been constructed, assembled and maintained in accordance with chapter 10.1 of the ADG Code; or
- (b) has not been inspected and tested at the intervals, and in the way, required under that chapter; or
- (c) did not satisfy a test under that chapter.

Maximum penalty—40 penalty units.

Division 3 Filling ratio and ullage

120 Application of div 3

This division applies to, and in relation to, the bulk transfer of dangerous goods into a tank or a tank vehicle.

121 Duty of transferor

A person must not bulk transfer dangerous goods into a tank or a tank vehicle if—

- (a) for dangerous goods of UN class 2 that are not in the form of refrigerated liquid—the quantity of the goods in the tank or tank of the tank vehicle is more than the maximum permitted filling ratio stated in section 10.3.2 of the ADG Code; or

- (b) in any other case—the ullage in the tank or tank of the tank vehicle does not comply with section 10.3.1 of the ADG Code.

Maximum penalty—20 penalty units.

122 Duty of prime contractor and rail operator

A prime contractor or rail operator must not transport dangerous goods in a tank or a tank vehicle if—

- (a) for dangerous goods of UN class 2 that are not in the form of refrigerated liquid—the quantity of goods in the tank or tank of the tank vehicle is more than the maximum permitted filling ratio stated in section 10.3.2 of the ADG Code; or
- (b) in any other case—the ullage in the tank or tank of the tank vehicle does not comply with section 10.3.1 of the ADG Code.

Maximum penalty—20 penalty units.

123 Duty of driver

A person must not drive a rail vehicle that is transporting dangerous goods in a tank or a tank vehicle if the person knows, or ought reasonably to know, that—

- (a) for dangerous goods of UN class 2 that are not in the form of refrigerated liquid—the quantity of goods in the tank or tank of the tank vehicle is more than the maximum permitted filling ratio stated in section 10.3.2 of the ADG Code; or
- (b) in any other case—the ullage in the tank or tank of the tank vehicle does not comply with section 10.3.1 of the ADG Code.

Maximum penalty—20 penalty units.

[s 124]

Part 12 Documentation

Division 1 Transport documentation

Subdivision 1 False or misleading information

124 False or misleading information

- (1) A person must not include information in transport documentation for dangerous goods that the person knows, or ought reasonably to know, is false or misleading in a material particular.

Example of false information in transport documentation—

a person named as consignor of the dangerous goods if the person is not the consignor of the goods

Maximum penalty—40 penalty units.

- (2) It is enough for a complaint against a person for an offence against subsection (1) to state that the information was false or misleading to the person's knowledge.

Subdivision 2 Requirements about keeping transport documentation

125 Duty of consignor

- (1) A person must not consign dangerous goods for transport unless the prime contractor or the rail operator has transport documentation complying with chapter 11.1 of the ADG Code for the goods.

Maximum penalty—40 penalty units.

- (2) For subsection (1), the prime contractor or the rail operator is to be taken to have transport documentation if the contents of the documentation have been communicated to the prime

contractor or the rail operator by means of electronic data processing or electronic data interchange.

126 Duty of prime contractor

- (1) A prime contractor must not permit a person to drive a rail vehicle used by the prime contractor to transport dangerous goods if the person has not been given transport documentation complying with chapter 11.1 of the ADG Code for the goods.

Maximum penalty—40 penalty units.

- (2) For subsection (1), the person is to be taken to have been given the transport documentation if the contents of the documentation have been communicated to the person by means of electronic data processing or electronic data interchange.

127 Duty of rail operator

- (1) A rail operator must not transport dangerous goods unless the driver of the rail vehicle transporting the goods has been given transport documentation complying with chapter 11.1 of the ADG Code for the goods.

Maximum penalty—20 penalty units.

- (2) For subsection (1), the driver is to be taken to have been given the transport documentation if the contents of the documentation have been communicated to the driver by means of electronic data processing or electronic data interchange.

128 Duties of driver

- (1) A person must not drive a rail vehicle that the person knows, or ought reasonably to know, is transporting dangerous goods, if the person does not have transport documentation complying with chapter 11.1 of the ADG Code for the goods.

Maximum penalty—40 penalty units.

[s 129]

- (2) A relevant emergency service officer or an authorised person may require the driver of a rail vehicle transporting dangerous goods to produce the transport documentation for the goods for inspection by the officer or person.
- (3) The driver must comply with the requirement, unless the driver has a reasonable excuse.
Maximum penalty—40 penalty units.
- (4) This section does not apply to a person driving a rail vehicle transporting dangerous goods if the driver is in a depot or yard, or is engaged in shunting operations, and the transport documentation for the goods is readily available elsewhere in the immediate vicinity of the depot, yard, or the operations.

Division 2 Emergency information

129 Definition for div 2

In this division—

required emergency information, for dangerous goods, means—

- (a) emergency information complying with chapter 11.2 of the ADG Code for the goods; or
- (b) emergency information approved under section 134 for the goods.

130 Duty of consignor

A person must not consign a placard load for transport in or on a rail vehicle if the person knows, or ought reasonably to know, that the required emergency information for the dangerous goods in the load is not in the driver's cab of the rail vehicle.

Maximum penalty—13 penalty units.

131 Duty of prime contractor

A prime contractor must not use a rail vehicle to transport a placard load if the required emergency information for the dangerous goods in the load is not in the driver's cab of the rail vehicle.

Maximum penalty—20 penalty units.

132 Duty of rail operator

- (1) A rail operator must not transport a placard load in or on a rail vehicle if the required emergency information for the dangerous goods in the load is not in the driver's cab of the rail vehicle.

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not apply when a rail vehicle transporting a placard load is involved in shunting operations and the required emergency information for the dangerous goods in the load is readily available elsewhere in the immediate vicinity of the operations.

133 Duties of driver

- (1) A person must not drive a rail vehicle transporting a placard load unless the required emergency information for the dangerous goods in the load is in the driver's cab of the rail vehicle.

Maximum penalty—13 penalty units.

- (2) A relevant emergency service officer or an authorised person may require the driver transporting a placard load to produce the required emergency information for the dangerous goods in the load for inspection by the officer or person.
- (3) The driver must comply with the requirement, unless the driver has a reasonable excuse.

Maximum penalty—6½ penalty units.

[s 134]

- (4) Subsections (1) and (2) do not apply to a person driving a rail vehicle transporting a placard load if the person is in a depot or yard, or is engaged in shunting operations, and the required emergency information for the goods is readily available elsewhere in the immediate vicinity of the depot, yard or the operations.

134 Approval of emergency information

The chief executive may, on application under section 165 or on the chief executive's own initiative, approve emergency information that does not comply with chapter 11.2 of the ADG Code if the chief executive considers that use of the information would be as accurate, and at least as convenient and efficient, as information complying with the chapter.

Division 3 Prior notice for specific dangerous goods

135 Duty of consignor

A person must not consign dangerous goods of UN class 1, UN division 6.2 or UN class 7 for transport unless the person has—

- (a) given the relevant rail operator notice of the consignment before consigning the dangerous goods; and
- (b) been advised by the relevant rail operator that the goods can be transported.

Maximum penalty—30 penalty units.

136 Duty of rail operator

A rail operator must, if required by the owner of the track on which dangerous goods of UN class 1, UN division 6.2 or UN class 7 are to be transported, give notice to the owner about

the transport of the goods on the track before the goods are transported on the track.

Maximum penalty—30 penalty units.

137 Duty of prime contractor

A prime contractor must, if required by the owner of the track on which dangerous goods of UN class 1, UN division 6.2 or UN class 7 are to be transported, give notice to the owner about the transport of the goods on the track before the goods are transported on the track.

Maximum penalty—30 penalty units.

Part 13 Procedures during transport

Division 1 Immobilised rail vehicles

138 Duty of driver

If a rail vehicle transporting a placard load fails or is otherwise immobilised, the driver of the vehicle must alert the train controller for the vehicle.

Maximum penalty—7½ penalty units.

139 Duty of rail operator

If a rail vehicle transporting a placard load fails or is otherwise immobilised, the rail operator must, as soon as practicable—

- (a) inform the owner of the section of track on which the vehicle has failed or is otherwise immobilised; and

[s 140]

- (b) take all other appropriate steps to ensure that a dangerous situation does not arise.

Maximum penalty—15 penalty units.

Division 2 Unloading at unattended places

140 Duty of rail operator

- (1) A rail operator must not allow dangerous goods being transported to be delivered at a location that is not attended by railway personnel, other than the crew of the rail vehicle transporting the goods, unless—

- (a) the consignee of the goods or a person acting for the consignee, is at the location to receive the goods; or
- (b) the consignee of the goods has agreed, in writing, with the rail operator for the rail operator to deliver the goods at a secure location and the goods are unloaded at the location.

Maximum penalty—15 penalty units.

- (2) In this section—

secure location, for the delivery of goods, means a location to which it may reasonably be expected that unauthorised persons will not gain access including by having regard to—

- (a) the nature of the location; and
- (b) the nature of the goods; and
- (c) the type of any container or rail wagon in which the goods are stored.

Part 14 Emergencies

Division 1 Emergencies generally

141 Duties of driver and rail operator for dangerous situation

- (1) This section applies if a rail vehicle transporting dangerous goods is involved in an incident resulting in a dangerous situation.
- (2) The driver of the rail vehicle must—
 - (a) notify the rail operator of the incident as soon as practicable; and
 - (b) provide any reasonable assistance required by an authorised person, or a relevant emergency service officer, to deal with the situation.

Maximum penalty—13 penalty units.

- (3) On being notified by the driver of the incident, the rail operator must—
 - (a) notify the prime contractor, the chief executive, and the Queensland Police Service or the Queensland Fire and Rescue Service, of the incident as soon as practicable, but not more than 24 hours after the incident; and
 - (b) provide any reasonable assistance required by an authorised person, or a relevant emergency service officer, to deal with the situation.

Maximum penalty—13 penalty units.

142 Duties of prime contractor and rail operator—food or food packaging

- (1) This section applies if—
 - (a) an incident involving a rail vehicle transporting dangerous goods results in the leakage, spillage or

[s 142]

escape of the dangerous goods, or in a fire or explosion;
and

(b) there is food or food packaging in the vicinity of the incident that is within the control of a prime contractor or rail operator.

(2) The prime contractor must not remove, or permit to be removed, the food or food packaging from the site of the incident unless the chief executive has given permission to the prime contractor to transport the food or food packaging from the site.

Maximum penalty—40 penalty units.

(3) The rail operator must—

(a) notify the chief executive of the incident as soon as is practicable after the incident; and

(b) deal with the food or food packaging as directed by the chief executive.

Maximum penalty—13 penalty units.

(4) A permission under subsection (2) or a direction under subsection (3)—

(a) must be in writing; and

(b) must state the name of the person to whom it is given;
and

(c) must identify the relevant incident; and

(d) must identify the food or food packaging to which it relates; and

(e) must take into consideration any requirements of the appropriate food and health authorities; and

(f) may contain any other information that the chief executive considers necessary.

143 Duties of prime contractor and rail operator to inform chief executive

- (1) This section applies if a rail vehicle transporting dangerous goods is involved in an incident resulting in a dangerous situation.
- (2) As soon as practicable, but not more than 24 hours after becoming aware of the incident, the prime contractor or the rail operator responsible for the transport of the goods must provide the chief executive and the owner of the track on which the incident happened with the following details about the incident—
 - (a) where the incident happened;
 - (b) the time and date of the incident;
 - (c) the nature of the incident;
 - (d) the dangerous goods being transported when the incident happened;
 - (e) any other details the chief executive may reasonably require.

Maximum penalty—20 penalty units.

- (3) Within 21 days after the day the incident happens, the prime contractor or the rail operator must give to the chief executive a written report about the incident stating the following—
 - (a) where the incident happened;
 - (b) the time and date of the incident;
 - (c) the nature of the incident;
 - (d) what the driver of the rail vehicle believes to be the likely cause of the incident;
 - (e) what the prime contractor or the rail operator believes to be the likely cause of the incident;
 - (f) the dangerous goods being transported when the incident happened;

[s 144]

- (g) the measures taken to control any leak, spill or escape of dangerous goods and any fire or explosion, arising out of the incident;
- (h) the measures taken after the incident in relation to the dangerous goods involved in the incident.

Maximum penalty—20 penalty units.

Division 2 Emergencies involving placard loads

144 Telephone advisory service

- (1) A prime contractor or rail operator must not transport a load of—
 - (a) dangerous goods in a receptacle with a capacity of more than 500L; or
 - (b) more than 500kg of dangerous goods in a receptacle; if a telephone advisory service is not available during the journey.

Maximum penalty—40 penalty units.

- (2) A person must not consign a load of—
 - (a) dangerous goods in a receptacle with a capacity of more than 500L; or
 - (b) more than 500kg of dangerous goods in a receptacle; if a telephone advisory service for the transport is not available during the journey.

Maximum penalty—40 penalty units.

- (3) For subsection (1) or (2), a telephone advisory service may be provided by the prime contractor, rail operator or consignor, or someone else for the prime contractor, rail operator or consignor.
- (4) In this section—

telephone advisory service, for the transport of dangerous goods, means a service providing access by a continuously monitored telephone not located on the rail vehicle carrying the goods to a person competent to give advice about—

- (a) the construction and properties of the receptacles in which the dangerous goods are being transported; and
- (b) the use of equipment on or in vehicles on which the dangerous goods are being transported; and
- (c) the properties of the dangerous goods; and
- (d) methods of safely handling the dangerous goods; and
- (e) methods of safely containing and controlling the dangerous goods in a dangerous situation.

145 Emergency plans

- (1) A prime contractor or rail operator must not transport a placard load by rail if the prime contractor or the rail operator does not have an emergency plan for the transport of the load.

Maximum penalty—40 penalty units.

- (2) A person must not consign a placard load for transport if the person does not have an emergency plan for the transport of the load.

Maximum penalty—40 penalty units.

- (3) The chief executive may, by written notice, require the prime contractor, rail operator or consignor of a placard load to produce the emergency plan for the transport of the load.

- (4) The prime contractor, rail operator or consignor must produce the emergency plan to the chief executive within 14 days after the day the notice is given.

Maximum penalty—15 penalty units.

- (5) In this section—

emergency plan, for the transport of a placard load, means a written plan, for dealing with any dangerous situation arising

[s 146]

from the transport of the goods, that is prepared having regard to guidelines approved by the Australian Transport Council.

Editor's note—

A copy of the guidelines is available from the website of the National Transport Commission. At the commencement of this definition, the website was at <www.ntc.gov.au>.

146 Duties of consignor—information and resources

- (1) This section applies if the consignor of dangerous goods in a placard load becomes aware that the rail vehicle transporting the load has been involved in an incident resulting in a dangerous situation.
- (2) The consignor must, unless the consignor has a reasonable excuse—
 - (a) give the prescribed person information about the following—
 - (i) the properties of the goods;
 - (ii) the construction and properties of packaging used to transport the goods;
 - (iii) safe methods of handling the goods;
 - (iv) safe methods of containing and controlling the goods in a dangerous situation; and
 - (b) provide the equipment and other resources necessary for the following—
 - (i) controlling the dangerous situation;
 - (ii) containing, controlling, recovering or disposing of dangerous goods that have leaked, spilled or escaped.

Maximum penalty—20 penalty units.

- (3) Subsection (2)(a) or (b) does not apply if the prime contractor or the rail operator responsible for the transport of the dangerous goods in the load gives the information or provides the equipment and resources for the incident.

(4) In this section—

prescribed person means—

- (a) if the consignor has been notified of the relevant emergency service officer who is in charge of dealing with the dangerous situation—the relevant emergency service officer; or
- (b) otherwise—a relevant emergency service officer.

147 Duties of prime contractor—information and resources

- (1) This section applies if the prime contractor responsible for the transport of dangerous goods in a placard load becomes aware that the vehicle transporting the load has been involved in an incident resulting in a dangerous situation.
- (2) The prime contractor must, unless the prime contractor has a reasonable excuse—
 - (a) give the prescribed person information about the following—
 - (i) the vehicle’s construction, properties and equipment;
 - (ii) the construction and properties of packaging used to transport the goods; and
 - (b) provide the equipment and other resources for the following—
 - (i) controlling the dangerous situation;
 - (ii) recovering a vehicle involved in the situation or its equipment.

Maximum penalty—20 penalty units.

- (3) Subsection (2)(a) or (b) does not apply if the consignor of the dangerous goods in the load or the rail operator responsible for the transport of the dangerous goods in the load gives the information or provides the equipment and resources for the incident.
- (4) In this section—

[s 148]

prescribed person means—

- (a) if the prime contractor has been notified of the relevant emergency service officer who is in charge of dealing with the dangerous situation—the relevant emergency service officer; or
- (b) otherwise—a relevant emergency service officer.

148 Duties of rail operator—information and resources

- (1) This section applies if the rail operator responsible for the transport of dangerous goods in a placard load becomes aware that the vehicle transporting the load has been involved in an incident resulting in a dangerous situation.
- (2) The rail operator must, unless the rail operator has a reasonable excuse—
 - (a) give the prescribed person information about the following—
 - (i) the vehicle’s construction, properties and equipment;
 - (ii) the construction and properties of packaging used to transport the goods; and
 - (b) provide the equipment and other resources for the following—
 - (i) controlling the dangerous situation;
 - (ii) recovering a vehicle involved in the situation or its equipment.

Maximum penalty—20 penalty units.

- (3) Subsection (2)(a) or (b) does not apply if the consignor of the dangerous goods in the load or the prime contractor responsible for the transport of the dangerous goods in the load gives the information or provides the equipment and resources for the incident.
- (4) In this section—

prescribed person means—

-
- (a) if the rail operator has been notified of the relevant emergency service officer who is in charge of dealing with the dangerous situation—the relevant emergency service officer; or
 - (b) otherwise—a relevant emergency service officer.

Part 15 Administrative matters

Division 1 Provisions about registers

149 Registers to which this division applies

This division applies to each of the following registers—

- (a) the register of determinations kept under section 26(1)(a);
- (b) the register of exemptions kept under section 160(1)(a);
- (c) the register of approvals kept under section 171(1)(a).

150 Registers may be kept by computer

- (1) A register, or part of a register, may be kept by computer.
- (2) An entry made by computer for a register is taken to be a record made in the register.

151 Inspection of registers

- (1) The chief executive must ensure that each register is available for inspection by dangerous goods authorities and the public.
- (2) The chief executive is taken to comply with subsection (1) by ensuring that there is reasonable access to—
 - (a) copies of information in a register; or
 - (b) a computer terminal to inspect a register.

[s 152]

Division 2 Recommendations by chief executive and dangerous goods authorities

152 Recommendations by chief executive

- (1) This section applies if the chief executive considers that a ground exists for a dangerous goods authority to do any of the following (the *proposed action*)—
 - (a) cancel or amend a corresponding determination;
 - (b) cancel or amend a corresponding approval or corresponding exemption.
- (2) The chief executive may recommend, in writing, that the dangerous goods authority take the proposed action.
- (3) The chief executive must provide written reasons to the dangerous goods authority for the recommendation.
- (4) If the recommendation is about a corresponding determination (other than a corresponding administrative determination), corresponding approval or corresponding exemption that has effect in 1 or more other participating jurisdictions, the chief executive must also refer the recommendation to the competent authorities panel.
- (5) In this section—

corresponding administrative determination means a corresponding determination that is—

 - (a) made by a dangerous goods authority on the application of a person; and
 - (b) applies only to the person.

153 Recommendations by dangerous goods authorities

- (1) This section applies if a dangerous goods authority recommends to the chief executive in writing that the chief executive do any of the following—

- (a) amend or cancel a determination;
 - (b) amend, suspend or cancel an administrative determination;
 - (c) amend, suspend or cancel an approval or exemption.
- (2) Subject to section 162(2)(b) and 173(2)(b), if the recommendation is about a determination (other than an administrative determination), approval or exemption that has effect in 1 or more other participating jurisdictions, the chief executive need not take any action on the recommendation until the competent authorities panel has considered the recommendation.
- (3) In any other case, the chief executive must have regard to the recommendation.

Division 3 Mutual recognition of determinations, exemptions and approvals

154 Corresponding determinations

- (1) This section applies to a decision, however called, made by a dangerous goods authority if—
- (a) the decision is made under a provision of the law of another jurisdiction corresponding to a provision (the *relevant provision*) of section 21 or 22; and
 - (b) the decision has effect in the other jurisdiction; and
 - (c) either of the following subparagraphs applies—
 - (i) the competent authorities panel has decided that the decision should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction and the panel has not reversed its decision;

[s 155]

- (ii) the decision is an administrative determination under a provision of the law of the other jurisdiction corresponding to section 23.
- (2) Other than for circumstances that do not exist in this jurisdiction, the decision has effect in this jurisdiction as if it were a determination made by the chief executive under the relevant provision.

155 Corresponding exemptions

- (1) This section applies to an exemption granted by a dangerous goods authority if—
 - (a) the exemption is granted for a provision of the law another jurisdiction corresponding to a provision (the *relevant provision*) of this regulation; and
 - (b) the exemption has effect in the other jurisdiction; and
 - (c) the competent authorities panel has decided that the exemption should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction, and the panel has not reversed its decision.
- (2) Other than for circumstances that do not exist in this jurisdiction, the exemption has effect in this jurisdiction as if it were an exemption granted by the chief executive for the relevant provision.

156 Corresponding approvals

- (1) This section applies to an approval issued or given in another jurisdiction if—
 - (a) the approval is issued or given under a provision of the law of the other jurisdiction corresponding to a provision (the *relevant provision*) of any of the following sections—
 - (i) section 47;
 - (ii) section 50;

- (iii) section 106;
 - (iv) section 107;
 - (v) section 134; and
 - (b) the approval has effect in the other jurisdiction; and
 - (c) the competent authorities panel has decided that the approval should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction, and the panel has not reversed its decision.
- (2) Other than for circumstances that do not exist in this jurisdiction, the approval has effect in this jurisdiction as if it were an approval given by the chief executive under the relevant provision.

Part 16 Exemptions

Division 1 Purpose of part

157 Purpose of pt 16

This part provides for the following matters in relation to exemptions under section 443 of the Act—

- (a) how applications for the exemptions must be made;
- (b) the keeping of a register of exemptions;
- (c) the role of the competent authorities panel in relation to the exemptions.

Division 2 General matters about exemptions

158 Applications for exemptions

- (1) An application for an exemption must be in the approved form.
- (2) An application for an exemption must—
 - (a) be made in writing to the chief executive; and
 - (b) be signed and dated by or for the applicant; and
 - (c) state the applicant's name and address; and
 - (d) state the name of the person to whom, or the name or a description of the class of persons to which, the application relates; and
 - (e) state the provisions of this regulation, and of the ADG Code, to which the application relates; and
 - (f) state the dangerous goods to which the application relates; and
 - (g) state why, in the applicant's opinion, compliance with the provisions mentioned in paragraph (e) is not reasonably practicable; and
 - (h) state why, in the applicant's opinion, the exemption is not likely to involve a greater risk than the risk involved in complying with the provisions mentioned in paragraph (e); and
 - (i) if the application relates to a rail vehicle, equipment, packaging or other thing—describe the vehicle, equipment, packaging or thing; and
 - (j) state the period for which the exemption is sought; and
 - (k) state the geographical area within which the exemption is to have effect; and
 - (l) if a fee is prescribed for the application—be accompanied by the prescribed fee.

- (3) The chief executive may, by written notice, ask the applicant to give to the chief executive the additional information reasonably necessary to decide the application.

159 Exemption notice to be kept

- (1) If an exemption is being relied on by the holder of the exemption, the holder must keep a copy of the exemption in the rail vehicle or on the premises to which the exemption applies.

Maximum penalty—7½ penalty units.

- (2) Subsection (1) does not apply if a copy of the exemption is available at an office of the holder.
- (3) If an exemption is being relied on by a member of the class of persons to which the exemption applies, the member must keep a copy of the exemption in the rail vehicle or on the premises to which the exemption applies.

Maximum penalty—7½ penalty units.

- (4) Subsection (3) does not apply if a copy of the exemption is available at an office of the member of the class of persons to whom the exemption applies.

160 Register of exemptions

- (1) The chief executive must—
 - (a) keep a register of exemptions; and
 - (b) with other dangerous goods authorities, keep a central register of corresponding exemptions.
- (2) A register kept under subsection (1) may have separate divisions for different kinds of exemptions.
- (3) The chief executive must record each exemption in the register kept under subsection (1)(a).
- (4) The chief executive must note the amendment, suspension or cancellation of an exemption in the register kept under subsection (1)(a).

[s 161]

(5) In this section—

corresponding exemption includes an exemption under this regulation that the competent authorities panel has decided should have effect in 1 or more other participating jurisdictions.

161 Records of exemptions

The record of an exemption in the register kept under section 160(1)(a) must include—

- (a) the terms of the exemption; or
- (b) the following information—
 - (i) the name of the person to whom, or the name or a description of the class of persons to which, the exemption applies;
 - (ii) the date when the exemption was granted;
 - (iii) the provisions of this regulation, and of the ADG Code, to which the exemption relates;
 - (iv) the period for which the exemption has effect;
 - (v) the dangerous goods, rail vehicle, equipment, packaging or other thing to which the exemption relates;
 - (vi) the geographical area for which the exemption has effect.

Division 3 Referring matters to the competent authorities panel

162 Referring matters to the competent authorities panel

- (1) The chief executive must refer an application for an exemption to the competent authorities panel if the chief executive considers that the exemption should have effect in

all participating jurisdictions or participating jurisdictions including this jurisdiction.

- (2) The chief executive must refer to the competent authorities panel an exemption having effect in this jurisdiction, and 1 or more other participating jurisdictions, if—
 - (a) the chief executive considers that the exemption should be amended, suspended or cancelled; or
 - (b) a dangerous goods authority recommends to the chief executive in writing that the exemption should be amended, suspended or cancelled.

163 Effect of competent authorities panel decision about application

- (1) This section applies if—
 - (a) an application for an exemption is referred to the competent authorities panel under section 162(1); and
 - (b) the competent authorities panel decides—
 - (i) that the exemption should be granted, what the terms of the exemption should be, and that the exemption should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction; or
 - (ii) that the exemption should not have effect in this jurisdiction.
- (2) The chief executive must have regard to the competent authorities panel's decision.

164 Effect of the competent authorities panel decisions about amending, suspending or cancelling exemption

- (1) This section applies if—
 - (a) an exemption is referred to the competent authorities panel under section 162(2); and

[s 165]

- (b) the competent authorities panel decides that the exemption—
 - (i) should be amended (whether or not the panel's decision is the same as the amendment proposed by the chief executive), and should have effect as amended in all participating jurisdictions or participating jurisdictions including this jurisdiction; or
 - (ii) should not be amended; or
 - (iii) should, or should not, be suspended or cancelled.
- (2) The chief executive must have regard to the competent authorities panel's decision.

Part 17 Administrative determinations and approvals

Division 1 General

165 Applications

- (1) An application for an administrative determination or approval, or for the amendment of an administrative determination or approval, must—
 - (a) be made to the chief executive in writing; and
 - (b) if a fee is prescribed for the application—be accompanied by the prescribed fee.
- (2) An application for the amendment of an administrative determination or approval must have the determination or approval with it.
- (3) The chief executive may, by written notice, ask an applicant to give to the chief executive the additional information reasonably necessary to decide the application.

166 Form of administrative determinations and approvals

- (1) An administrative determination, or an approval on application, must be given by written notice to the applicant.
- (2) An approval under section 134 on the chief executive's initiative is given by recording it in the register kept under section 171(1)(a).

167 When administrative determinations and approvals not to be made etc.

The chief executive must not make an administrative determination on the application of, or give an approval under this regulation to, a person who is prohibited by a court order from involvement in the transport of dangerous goods.

168 Reasons for refusal of applications

- (1) This section applies if the chief executive refuses an application to—
 - (a) make or amend an administrative determination; or
 - (b) give or amend an approval under this regulation.
- (2) The chief executive must inform the applicant by written notice of the refusal.
- (3) The notice must be or include an information notice for the refusal.

169 Periods and conditions

- (1) An administrative determination or approval has effect for the period stated in the determination or approval.
- (2) A condition to which an administrative determination, or an approval, is subject must be stated in the determination or approval.

[s 170]

170 Replacement administrative determinations and approvals

The chief executive must issue to a person to whom an administrative determination applies, or an approval is given, a replacement determination or approval if—

- (a) the determination or approval is amended; or
- (b) the chief executive is satisfied that the determination or approval has been defaced, destroyed, lost or stolen.

Division 2 Register of approvals

171 Register of approvals

- (1) The chief executive must—
 - (a) keep a register of approvals; and
 - (b) with other dangerous goods authorities, keep a central register of corresponding approvals.
- (2) A register kept under subsection (1) may have separate divisions for different kinds of approvals.
- (3) The chief executive must record each approval in the register kept under subsection (1)(a).
- (4) The chief executive must note the amendment, suspension or cancellation of an approval in the register kept under subsection (1)(a).
- (5) In this section—

corresponding approval includes an approval under this regulation that the competent authorities panel has decided should have effect in 1 or more other participating jurisdictions.

172 Records of approvals

The record of an approval in the register kept under section 171(1)(a) must include—

- (a) the terms of the approval; or
- (b) the following information—
 - (i) the name of the person to whom the approval was given;
 - (ii) the date when the approval was given;
 - (iii) the provisions of this regulation, and of the ADG Code, to which the approval relates;
 - (iv) the period for which the approval has effect;
 - (v) the dangerous goods, equipment, packaging, rail vehicle or other thing to which the approval relates;
 - (vi) the conditions, if any, of the approval.

Division 3 Referring matters to the competent authorities panel

173 Referring matters to the competent authorities panel

- (1) The chief executive must refer an application for an approval to the competent authorities panel if the chief executive considers that the approval should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction.
- (2) The chief executive must refer to the competent authorities panel an approval having effect in this jurisdiction, and 1 or more other participating jurisdictions, if—
 - (a) the chief executive considers that the approval should be amended, suspended or cancelled; or
 - (b) a dangerous goods authority recommends to the chief executive in writing that the approval should be amended, suspended or cancelled.

[s 174]

174 Effect of competent authorities panel decision about application

- (1) This section applies if—
 - (a) an application for an approval is referred to the competent authorities panel under section 173(1); and
 - (b) the competent authorities panel decides—
 - (i) that the approval should be given, what the terms of the approval should be, and that the approval should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction; or
 - (ii) that the approval should not have effect in this jurisdiction.
- (2) The chief executive must have regard to the competent authorities panel's decision.

175 Effect of competent authorities panel decision about amending, suspending or cancelling approval

- (1) This section applies if—
 - (a) an approval is referred to the competent authorities panel under section 173(2); and
 - (b) the competent authorities panel decides that the approval—
 - (i) should be amended (whether or not the panel's decision is the same as the amendment proposed by the chief executive), and should have effect as amended in all participating jurisdictions or in participating jurisdictions including this jurisdiction; or
 - (ii) should not be amended; or
 - (iii) should, or should not, be cancelled or suspended.
- (2) The chief executive must have regard to the competent authorities panel's decision.

Division 4 **Amendment, suspension or cancellation of administrative determinations**

176 **Amending, suspending or cancelling administrative determinations**

- (1) The chief executive may amend, suspend or cancel an administrative determination on a ground mentioned in section 444 of the Act as if it were an approval.
- (2) Sections 445 and 447 to 449 of the Act apply for amending, suspending or cancelling an administrative determination as if the administrative determination were an approval.

Part 18 **Review and appeal of decisions**

177 **Review of and appeals against decisions**

- (1) A person whose interests are affected by a decision (the *original decision*) described in schedule 1 may ask the chief executive to review the decision.
- (2) The person is entitled to receive a statement of reasons for the original decision whether or not the provision of this regulation under which the decision is made requires that the person be given a statement of reasons for the decision.
- (3) The *Transport Planning and Coordination Act 1994*, part 5, division 2—
 - (a) applies to the review; and
 - (b) provides—
 - (i) for the procedure for applying for the review and the way it is to be carried out; and
 - (ii) that the original decision may be stayed by the person by applying to the Magistrates Court.

[s 178]

- (4) Also, after the chief executive confirms or amends the original decision or substitutes another decision, the person may appeal against the confirmed, amended or substituted decision (the *reviewed decision*) to the Magistrates Court.
- (5) The *Transport Planning and Coordination Act 1994*, part 5, division 3—
 - (a) applies to the appeal; and
 - (b) provides—
 - (i) for the procedure for the appeal and the way it is to be disposed of; and
 - (ii) that the reviewed decision may be stayed by the person by applying to the Magistrates Court.

Part 19 Fees

178 Fees

The fees payable under this regulation are stated in schedule 2.

Part 20 Repeal and transitional provisions

Division 1 Repeal provision

179 Repeal

The Transport Infrastructure (Dangerous Goods by Rail) Regulation 2002, SL No. 308 is repealed.

Division 2 Transitional provisions

Subdivision 1 General provisions

180 Definitions for div 2

In this division—

commencement means the commencement of this section.

repealed regulation means the *Transport Infrastructure (Dangerous Goods by Rail) Regulation 2002* as in force before the commencement.

181 Lawful conduct under previous law

A person does not commit an offence against this regulation if, within 12 months after the commencement, the person transports dangerous goods in accordance with the Act, including the repealed regulation, as in force immediately before the commencement.

Subdivision 2 Determinations and corresponding determinations

182 Continuing effect of particular determinations

- (1) This section applies to a determination that—
 - (a) was made under the repealed regulation; and
 - (b) was in force in this jurisdiction immediately before the commencement; and
 - (c) is a determination in relation to something that may be decided under a provision (the *relevant provision*) of section 21 or 22.
- (2) This section also applies to a determination made under the repealed regulation following a review or appeal under

[s 183]

subdivision 5 that is in relation to something that may be decided under a provision (the *relevant provision*) of section 21 or 22.

- (3) The determination is taken to be a determination under the relevant provision, subject to the same conditions and restrictions.
- (4) Without limiting subsection (3), the chief executive may record the determination in the register of determinations kept under section 26(1)(a).

183 Existing applications for particular administrative determinations

- (1) This section applies to an application (*existing application*) that—
 - (a) is for an administrative determination in relation to something that may be decided under a relevant provision mentioned in section 182(1)(c); and
 - (b) was made under the repealed regulation, section 178; and
 - (c) has not been finally decided before the commencement.
- (2) At the commencement, the existing application is taken to be an application made under this regulation for an administrative determination under the relevant provision.

184 Existing applications for amendments of particular administrative determinations

- (1) This section applies to an application (*existing application*) that—
 - (a) is for an amendment of an administrative determination in relation to something that may be decided under a relevant provision mentioned in section 182(1)(c); and
 - (b) was made under the repealed regulation, section 178; and

- (c) has not been finally decided before the commencement.
- (2) At the commencement, the existing application is taken to be an application made under this regulation for an amendment of an administrative determination under the relevant provision.

185 Continuing effect of particular corresponding determination

- (1) This section applies to a determination (however described) that—
 - (a) was made under a law of another jurisdiction about the transport of dangerous goods; and
 - (b) was in force in this jurisdiction immediately before the commencement; and
 - (c) is a determination in relation to something that may be decided under a provision of the law of the other jurisdiction (the *corresponding provision*) that corresponds to a relevant provision mentioned in section 182(1)(c).
- (2) Except for circumstances that do not exist in this jurisdiction, the determination has effect for this regulation as if it were a decision subject to the same conditions and restrictions made by a dangerous goods authority under the corresponding provision.

Subdivision 3 Approvals and corresponding approvals

186 Continuing effect of particular approvals

- (1) This section applies to an approval that—
 - (a) was given under the repealed regulation; and
 - (b) was in force in this jurisdiction immediately before the commencement; and

[s 187]

- (c) is an approval of something that may be approved under a provision (the *relevant provision*) of any of the following sections—
 - (i) section 47;
 - (ii) section 106;
 - (iii) section 107;
 - (iv) section 134.
- (2) This section also applies to an approval given under the repealed regulation following a review or appeal under subdivision 5 that is an approval of something that may be approved under a relevant provision mentioned in subsection (1)(c).
- (3) The approval is taken to be an approval given by the chief executive under the relevant provision subject to the same conditions and restrictions.
- (4) For subsection (1)(c)(ii), an approval of a segregation device under the repealed regulation, section 116 is taken to be an approval of a type II segregation device.
- (5) Without limiting subsection (3), the chief executive may record the approval in the register of approvals kept under section 171(1)(a).
- (6) If an approval to which subsection (3) applies does not have an expiry date, the approval expires 5 years after the commencement.
- (7) Each approval under the repealed regulation, section 95 stops having effect at the commencement other than to the extent the approval applies in relation to a person engaging in conduct to which section 181 applies.

187 Existing applications for particular approvals

- (1) This section applies to an application (*existing application*) that—

- (a) is for an approval of something that may be approved under a relevant provision mentioned in section 186(1)(c); and
 - (b) was made under the repealed regulation, section 178; and
 - (c) has not been finally decided before the commencement.
- (2) At the commencement, the existing application is taken to be an application made under this regulation for an approval under the relevant provision.

188 Existing applications for amendments of particular approvals

- (1) This section applies to an application (*existing application*) that—
- (a) is for an amendment of an approval of something that may be approved under a relevant provision mentioned in section 186(1)(c); and
 - (b) was made under the repealed regulation, section 178; and
 - (c) has not been finally decided before the commencement.
- (2) At the commencement, the existing application is taken to be an application made under this regulation for an amendment of an approval under the relevant provision.

189 Continuing effect of particular corresponding approvals

- (1) This regulation applies to an approval (however described) that—
- (a) was given under a law of another jurisdiction about the transport of dangerous goods; and
 - (b) was in force in the other jurisdiction immediately before the commencement; and
 - (c) is an approval of something that may be approved under a provision of the law of the other jurisdiction (the

[s 190]

corresponding provision) corresponding to a relevant provision mentioned in section 186(1)(c).

- (2) Except for circumstances that do not exist in this jurisdiction, the approval has effect for this regulation as if it were an approval subject to the same conditions and restrictions given by a dangerous goods authority under the corresponding provision.
- (3) If an approval to which subsection (2) applies does not have an expiry date, the approval expires 5 years after the commencement.

Subdivision 4 Particular existing requirements

190 Particular requirements made of a person continue

- (1) This section applies if—
 - (a) a requirement is made of a person under any of the following sections of the repealed regulation—
 - (i) section 58;
 - (ii) section 60;
 - (iii) section 154;
 - (iv) section 155; and
 - (b) the requirement has not been complied with before the commencement.
- (2) The requirement and the repealed regulation continue to apply in relation to the person as if this regulation had not been made.

191 Requirements relating to particular incidents continue

- (1) This section applies if—
 - (a) an incident to which section 154 or 155 of the repealed regulation applies happens before the commencement; and

-
- (b) the relevant section requires something to be done or not done in relation to the incident; and
 - (c) the thing has not been done or done before the commencement.
- (2) The repealed regulation continues to apply in relation to the incident as if this regulation had not been made.

Subdivision 5 Existing reviews and appeals

192 Definition for sdiv 5

In this subdivision—

reviewable decision means a decision mentioned in the repealed regulation, schedule 1.

193 Reviews about particular decisions

- (1) Subsection (2) applies if—
 - (a) a person has made an application under the repealed regulation for a review of a reviewable decision; and
 - (b) a decision on the application for review has not been made before the commencement.
- (2) A decision (a *review decision*) on the application for review must be made under the repealed regulation.
- (3) Subsection (4) applies if—
 - (a) immediately before the commencement, a person could have applied under the repealed regulation for a review of a reviewable decision; and
 - (b) the person has not made the application before the commencement.
- (4) The person may apply to the chief executive for a review of the decision as provided under the repealed regulation, and the chief executive's decision (also a *review decision*) on that application must be made under the repealed regulation.

[s 194]

- (5) If the review decision is an amendment or substitution of the reviewable decision, the review decision must be given effect under the repealed regulation.

Example—

If the effect of a review decision about the chief executive's refusal to make an administrative determination is that the administrative determination must be made, the administrative determination must be made under the repealed regulation.

- (6) If the review decision is a confirmation of the reviewable decision, despite the repeal of the repealed regulation—
- (a) the matter to which the reviewable decision relates continues to be a matter to be dealt with under the repealed regulation; and

Example—

If the reviewable decision relates to an application for an administrative determination, the application continues to be an application for an administrative determination under the repealed regulation.

- (b) any further decision about the matter must be made under the repealed regulation; and
- (c) the person in relation to whom the review decision is made may appeal against the review decision under the repealed regulation.
- (7) For subsections (2) and (4) to (6), the repealed regulation continues to have effect as if this regulation had not been made.

194 Appeals about particular decisions

- (1) Subsection (2) applies if—
- (a) a person has appealed to a court under the repealed regulation against a decision of the chief executive confirming a reviewable decision; and
- (b) the appeal has not been decided before the commencement.

-
- (2) The court must hear, or continue to hear, and decide the appeal under the repealed regulation.
 - (3) Subsection (5) applies if—
 - (a) immediately before the commencement, a person could have appealed to a court under the repealed regulation against a decision mentioned in subsection (1)(a); and
 - (b) the person has not appealed before the commencement.
 - (4) Subsection (5) also applies to a review decision mentioned in section 193(6)(c).
 - (5) The person may appeal to the court as provided under the repealed regulation, and the court must hear and decide the appeal under the repealed regulation.
 - (6) If the court decides in favour of the appellant, the chief executive must give effect to the court's decision under the repealed regulation.

Example—

If the court decides that an administrative determination the subject of the appeal must be made, the administrative determination must be made under the repealed regulation.

- (7) If the court refers the matter to the chief executive with directions—
 - (a) the matter must be dealt with under the repealed regulation; and
 - (b) the chief executive must follow the court's directions to the extent possible.
- (8) If the court confirms the decision being appealed against, despite the repeal of the repealed regulation—
 - (a) the matter to which the decision relates continues to be a matter to be dealt with under the repealed regulation; and

Example—

If the decision being appealed against relates to an application for an administrative determination, the application continues to

[s 195]

be an application for an administrative determination under the repealed regulation.

- (b) any further decision about the matter must be made under the repealed regulation.
- (9) For subsections (2) and (5) to (8), the repealed regulation continues to have effect as if this regulation had not been made.

Part 21 **Amendment of Statutory Instruments Regulation 2002**

195 **Regulation amended in pt 21**

This part amends the *Statutory Instruments Regulation 2002*.

196 **Amendment of sch 1 (Statutory instruments that are subordinate legislation)**

Schedule 1, item 3, from '2002'—

omit, insert—

'2008, section 21 or 22'.

Schedule 1 Reviewable decisions

section 177

Section	Description of decision
21	refusing to make an administrative determination under section 21(1) or (2) or making an administrative determination on conditions
22	refusing to make an administrative determination under section 22(1) or making an administrative determination on conditions
47	refusing to approve design of packaging or approving design on conditions
50	refusing to approve method of preparing overpack or approving method on conditions
106	refusing to approve method of segregation or approving method on conditions
107	refusing to approve design of type II segregation device or approving design on conditions
110	refusing to approve method of separating or marshalling or approving method on conditions
134	refusing to approve emergency information
168	refusing to amend an administrative determination or approval

Schedule 2 Fees

section 178

	\$
1 Application for approval of tank design under section 46. .	180.80
2 Application for approval of an IBC design under section 46.....	36.15

Schedule 3 Dictionary

section 7

ADG Code means the Australian Code for the Transport of Dangerous Goods by Road and Rail, seventh edition, approved by the Australian Transport Council.

Editor's note—

A copy of the code may be obtained from the website of the National Transport Commission. At the commencement of this definition, the website was at <www.ntc.gov.au>.

administrative determination see section 23.

ADR approved means approved in accordance with the European Agreement concerning the International Carriage of Dangerous Goods by Road published by the Inland Transport Committee of the United Nations Economic Commission for Europe.

Editor's note—

A copy of the agreement is available from the website of the United Nations Economic Commission for Europe. At the commencement of this definition, the website was at <www.unece.org>.

aggregate quantity, in relation to a load containing dangerous goods, means the total of—

- (a) the number of kilograms of the following in the load—
 - (i) solid dangerous goods;
 - (ii) articles, including aerosols; and
- (b) the number of litres or kilograms, being whichever is used to describe the goods in the transport documentation for the transport of the goods, of liquid dangerous goods in the load; and
- (c) the total capacity in litres of receptacles in the load containing dangerous goods of UN class 2 other than aerosols.

amend includes vary.

appropriately marked see section 74.

appropriately placarded see section 79.

approval means an approval that—

- (a) is given under this regulation by the chief executive or an authorised entity; and
- (b) is in effect.

approved packaging means—

- (a) packaging of a design that is approved under section 47; or
- (b) foreign approved packaging.

AS/NZS means a standard published jointly by Standards Australia and Standards New Zealand.

Australian Transport Council means the council of Commonwealth, New Zealand and State Ministers, established on 11 June 1993 and known as the Australian Transport Council, but constituted so that it consists of only 1 Minister representing each of the Commonwealth, the States, the Australian Capital Territory and the Northern Territory.

authorised entity means an entity authorised under section 51 to issue approvals under section 47 or 50.

authorised person means an authorised person under the *Transport Operations (Passenger Transport) Act 1994*.

bulk container see section 14.

bulk transfer, for part 11, see section 113.

capacity, of packaging, means the total internal volume of the packaging at a temperature of 15°C, expressed in litres or cubic metres.

category, for dangerous goods, means the category to which the dangerous goods belong under section 32.

competent authorities panel means the entity—

- (a) whose members include—
 - (i) the chief executive; and

- (ii) dangerous goods authorities; and
- (b) that is established, and operates, in accordance with the the Competent Authorities Panel Rules made by the National Transport Commission on 13 June 2008 and approved by the Australian Transport Council on 15 August 2008.

compliance plate means a plate that must be attached to a portable tank, MEGC or tank vehicle under part 6 of the ADG Code, and includes identification plates.

corresponding approval means an approval to which section 156 applies.

corresponding determination means a decision to which section 154 applies.

corresponding exemption means an exemption to which section 155 applies.

dangerous goods see section 30.

dangerous goods list means the dangerous goods list in section 3.2.3 of the ADG Code.

demountable tank means a tank, other than a portable tank, that—

- (a) is designed to be carried on a rail vehicle; and
- (b) does not form part of and is not permanently attached to the vehicle; and
- (c) is designed to be removable.

design, of a tank, includes the design of—

- (a) the attachment system for attaching a container to a rail wagon of which the tank is intended to form a part or to which it is intended to be attached; and
- (b) the stability characteristics, and other attributes, of the rail wagon affecting the suitability of a tank manufactured as stated in the design to transport the dangerous goods of the particular type that are the subject of the design's approval.

determination means a decision that is made by the chief executive under section 21 or 22, and that is in effect.

exemption means an exemption in force under section 443 of the Act.

Note—

Part 16 provides for matters relating to exemptions under section 443 of the Act.

food includes—

- (a) a substance prepared or intended for human or animal consumption; and
- (b) a substance, other than a dangerous good, intended to be an ingredient of food.

food packaging means—

- (a) a receptacle that contains, or is designed or intended to contain, food; or
- (b) material designed or intended to be used in a receptacle that is designed or intended to contain food.

foreign approved, in relation to packaging, means packaging that has the markings required by part 6 of the ADG Code for packaging of its type, in confirmation that the packaging is ADR, ICAO, IMO, RID or UN approved.

freight container means a re-usable container of the kind mentioned in AS/NZS 3711 that is designed for repeated use for the transport of goods by 1 or more modes of transport.

general packaging, for part 4, division 4, see section 53.

goods too dangerous to be transported see section 31.

hose assembly means a hose, or 2 or more hoses connected together, for use in the transfer of dangerous goods to or from a tank on a rail vehicle, portable tank or receptacle and includes—

- (a) if there are 2 or more hoses connected together—the connections between the hoses; and
- (b) the attachment connecting the hose or hoses to the tank; and

- (c) anything else other than the vehicle, portable tank or receptacle that is attached to the hose or hoses.

IBC means an intermediate bulk container.

ICAO approved means approved in accordance with the Technical Instructions for the Safe Transport of Dangerous Goods by Air published by the International Civil Aviation Organization.

Editor's note—

To purchase a copy of the technical instructions, see the website of the International Civil Aviation Organization. At the commencement of this definition, the website was at <www.icao.int>.

IMO approved means approved in accordance with the International Maritime Dangerous Goods Code published by the International Maritime Organization.

Editor's note—

To purchase a copy of the code, see the website of the International Maritime Organization. At the commencement of this definition, the website was at <www.imo.org>.

incompatible see section 35.

information notice, for a decision made in relation to a person, means a written notice stating—

- (a) the reasons for the decision; and
- (b) that the person may—
 - (i) under section 177, ask for the decision to be reviewed and appeal against the reviewed decision; and
 - (ii) under the *Transport Planning and Coordination Act 1994*, part 5, ask for the decision or the reviewed decision to be stayed.

inner packaging, in relation to goods, means packaging for which outer packaging is required for the transport of the goods under the ADG Code.

intermediate bulk container see section 15.

journey means the transport of dangerous goods from where the goods are consigned to where the goods are delivered to the consignee.

jurisdiction means the Commonwealth or a State.

large packaging means outer packaging that—

- (a) is designed for mechanical handling; and
- (b) has a capacity of not more than 3m³; and
- (c) is intended to contain articles or inner packaging with—
 - (i) a net mass of more than 400kg; or
 - (ii) capacities totalling more than 450L.

MEGC means multiple-element gas container.

multimodal means applicable to, or suitable for use on, more than 1 mode of transport.

multiple-element gas container see section 16.

NATA means the National Association of Testing Authorities, Australia.

other packaging, for part 4, division 5, see section 58.

outer packaging means external packaging, including absorbent materials, cushioning and any other components, necessary for the purposes of transport to contain and protect—

- (a) articles; or
- (b) receptacles in composite packaging within the meaning of section 1.2.1.1 of the ADG Code; or
- (c) inner packaging in combination packaging within the meaning of section 1.2.1.1 of the ADG Code.

overpack means packaging, other than large packaging, used to hold and consolidate packages of goods into a single unit for easier handling and stowage.

Examples—

- a pallet, together with strapping or shrink wrapping, designed to hold packages
- a box or crate into which packages are placed

owner, of a rail wagon, means the person—

- (a) who is the sole owner, a joint owner or a part owner of the wagon; or
- (b) who has the possession or use of the wagon under a hiring agreement, hire-purchase agreement, lease or other agreement.

owner, of track, means the person who is responsible because of ownership, control or management, for—

- (a) the construction and maintenance of the track and associated civil engineering or electric traction infrastructure; or
- (b) the construction, operation or maintenance of train control and communication systems for the transport of dangerous goods on the track.

packaging includes inner packaging, outer packaging, overpacks, large packaging, IBCs, MEGCs, tanks (including the tank of a tank vehicle), bulk containers, freight containers, drums, barrels, jerry cans, boxes and bags.

packed in limited quantities see section 18.

packing group, for dangerous goods, means the packing group to which the dangerous goods belong under section 34.

participating jurisdiction means—

- (a) this jurisdiction; or
- (b) a participating dangerous goods jurisdiction.

placard load means a load of dangerous goods that must be placarded under section 78.

placards, when used as a verb, see section 79(1).

portable tank means a multimodal tank that—

- (a) is designed primarily to be loaded on to a vehicle, a rail vehicle or ship; and
- (b) has a capacity of more than 450L; and
- (c) is equipped with skids, mountings, stabilisers and accessories to facilitate mechanical handling; and
- (d) is capable of being loaded and unloaded without removing its service equipment or structural equipment; and
- (e) is capable of being lifted when full.

prescribed dangerous goods, for part 11, division 2, see section 114.

prescribed way, for part 11, division 2, see section 114.

pressure drum means a welded transportable pressure receptacle with a water capacity of more than 150L but not more than 1000L.

Examples of welded transportable pressure receptacles—

cylindrical receptacle equipped with rolling hoops, spheres on skids

prime contractor, in relation to the transport of dangerous goods, means the person who, in conducting a business for or involving the transport of dangerous goods, has undertaken to be responsible for, or is responsible for, the transport of the goods.

rail operator, for the transport of dangerous or other goods by rail, means a person who undertakes to be responsible, or is responsible for—

- (a) the transport of the goods by rail; or
- (b) the condition of a rail wagon transporting the goods by rail.

rail wagon means a rail vehicle that is designed to carry freight.

receptacle, in relation to a substance or article, means a container that is—

-
- (a) for receiving and holding the substance or article (including anything that enables the container to be closed); and
 - (b) in contact with the substance or article.

recognised testing facility see section 48.

required emergency information, for part 12, division 2, see section 129.

retail distribution load has the meaning given by section 7.3.1 of the ADG Code.

RID approved means approved under the Regulation concerning the International Carriage of Dangerous Goods by Rail published by the Intergovernmental Organisation for International Carriage by Rail.

Editor's note—

A copy of the regulation is available from the website of the Intergovernmental Organisation for International Carriage by Rail. At the commencement of this definition, the website was at <www.otif.org>.

risk means risk of personal injury, death, property damage or harm to the environment.

service equipment has the meaning given by—

- (a) for a tank—section 6.7.2.1, 6.7.3.1 or 6.7.4.1 of the ADG Code; or
- (b) for an MEGC—section 6.7.5.1 of the ADG Code.

special provision, for part 3, see section 37.

structural equipment has the meaning given by—

- (a) for a tank—section 6.7.2.1, 6.7.3.1 or 6.7.4.1 of the ADG Code; or
- (b) for an MEGC—section 6.7.5.1 of the ADG Code.

subsidiary risk, for dangerous goods, means the subsidiary risk to which the dangerous goods belong under section 33.

tank see section 17.

tank vehicle means a unit of rolling stock—

- (a) of which a tank forms a part; or
- (b) to which a tank, other than a portable tank, is attached.

this jurisdiction means the State.

track means railway track.

train means 2 or more units of rolling stock (at least 1 unit of which is a locomotive or self-propelled unit) that are coupled together.

Examples of units of rolling stock—

rail wagon, rail tank wagon, locomotive, guard's van, crew or passenger carriage, track maintenance vehicle

train controller, for a train, means an individual who is in control of train control signalling and communication for the section of track on which the train is travelling or standing.

transport unit means—

- (a) a vehicle; or
- (b) a rail vehicle; or
- (c) a portable tank; or
- (d) a bulk container; or
- (e) a freight container.

tube means a seamless transportable pressure receptacle with a water capacity of more than 150L but not more than 3000L.

UN approved means approved under the Recommendations on the Transport of Dangerous Goods: Model Regulations published by the United Nations.

Editor's note—

To purchase a copy of the model regulations see the website of the United Nations. At the commencement of this definition, the website was at <www.un.org>.

UN class, for dangerous goods, means the class to which the dangerous goods belong under section 32.

UN division, for dangerous goods, means the division to which the dangerous goods belong under section 32.

unsuitable see section 44.

ENDNOTES

- 1 Made by the Governor in Council on 11 December 2008.
- 2 Notified in the gazette on 12 December 2008.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Transport.

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