

DANGEROUS GOODS SAFETY MANAGEMENT BILL 2001

EXPLANATORY NOTES

Policy Objectives of the Bill

This Bill is a significant community safety initiative designed to prevent major chemical accidents. Its objective is to protect people, property and the environment from harm from hazardous materials, such as petrol or liquefied petroleum gas.

The Bill applies to the following situations:

- (a) the operation of large-scale high risk industrial facilities (such as oil refineries), known as ‘major hazard facilities’ or MHFs;
- (b) the storage and handling of dangerous goods and combustible liquids at smaller facilities, known as ‘dangerous goods locations’ or DGLs; and
- (c) the provision of advice and assistance by scientific/technical advisers (‘hazmat advisers’) to the emergency services and the Police at the scene of an incident involving hazardous materials (a ‘hazardous materials emergency’).

Requirements for (a) and (b) are based on two national standards, developed by the National Occupational Health and Safety Commission, the *National Standard for the Control of Major Hazard Facilities* (or MHF national standard) and the *National Standard for the Storage and Handling of Workplace Dangerous Goods* (or dangerous goods national standard). These national standards provide the basis for the safety obligations of the ‘occupiers’ of MHFs or DGLs (employers, or other people who have overall management of a facility).

In line with international initiatives, the Bill requires the occupiers of MHFs to prepare a ‘safety report’ demonstrating that they have satisfied their safety obligations. The safety report is then reviewed, in conjunction with an audit of the MHF, to ensure compliance. The importance of the safety report as a measure to prevent major accidents was emphasised by

the Royal Commission inquiry into the Longford incident. This Bill has been drafted, taking into account the findings of the Royal Commission. All recommendations will be implemented, either in the Bill itself, or in supporting guidelines for industry and regulators.

Alternative Ways of Achieving the Policy Objectives

New legislation is required to achieve the policy objectives of the Bill. The Bill will provide for a whole-of-government co-ordination and integrated approach to the storage and handling of dangerous goods and to the operation of major hazard facilities.

Estimated Cost of Government Implementation

The administrative arrangements will incur costs to Government of:

- (a) for 2000-2001 - \$399,360;
- (b) for 2001-2002 (and thereon) - \$505,814.

This funding is primarily associated with the appointment of five additional staff in the Chemical Hazards and Emergency Management (CHEM) Unit, Department of Emergency Services (DES):

- (a) three extra staff members for the MHF auditing-review program;
- (b) one extra staff member for the DGL program; and
- (c) one extra staff member for the hazmat advisory service.

DES has provided funding by reprioritising Departmental programs.

FLP Issues

Does the Bill infringe Fundamental Legislative Principles (FLPs)?

In accordance with Cabinet's decision regarding the preparation of this Bill, the Bill has been drafted with due regard to fundamental legislative principles (FLPs) as outlined in the *Legislative Standards Act 1992*. Any infringement of FLPs occurs only when it has been considered essential in the public interest, having regard to the potential impact of dangerous goods and other hazardous materials on public safety.

Does the legislation confer powers to enter premises, etc. only with a warrant?

1. Under clause 62(1) (d), an authorised officer may enter a place without consent or a warrant if it is a major hazard facility, dangerous goods location, or a workplace under the control of a person who has an obligation under this Act and is
 - a open for carrying on business; or
 - b otherwise open for entry.

Entry to the workplace of persons with obligations under this Act is necessary because activities outside an MHF or DGL can affect the safety of operations at the MHF or DGL. The safety of equipment ('storing or handling systems') is an important example. Under the Bill, a manufacturer of a storing or handling system for use at a MHF or DGL has an obligation to ensure the system is constructed so that, when used properly, the risk to persons, property or the environment from the use of the system is at an acceptable level. If equipment is involved in a major accident and under repair, an authorised officer must have ready access to the workplace of the manufacturer to determine the cause of the accident. A delayed entry might jeopardise the safety of the employees of the MHF or DGL if other similar equipment is in use at the MHF or DGL.

2. Clause 62(1) (e) allows an authorised officer to enter a place without consent or a warrant if the authorised officer reasonably believes a dangerous situation exists at the place and it is urgent that the authorised officer enter it to prevent, remove or minimise the danger. This power cannot be exercised lightly because the strict test of 'reasonable belief' applies. Furthermore, it is confined to urgent situations. Any delay incurred in obtaining a warrant might result in fatalities and injuries to workers or to people in the nearby community.
3. Under clause 62(1)(f) an authorised officer may enter a place without consent or a warrant if the entry is urgently required to investigate the circumstances of a major accident or near miss at the place. As for 62(1)(e), this power is confined to urgent circumstances, where delay might result in further harm to people, property or the environment.
4. Clause 122 allows a hazmat adviser to enter a place at which a hazardous materials emergency is happening if asked to do so by a 'prescribed person'. A prescribed person, as listed in the Bill, would be the person in charge of the emergency, namely -
 - (a) a fire officer; or
 - (b) a police officer; or

- (c) if the place is a mine to which the Coal Act applies - an inspector under that Act; [the *Coal Mining Act 1925* or the *Coal Mining Safety and Health Act 1999*, depending on commencement of the latter]; or
- (d) if the place is a mine or quarry to which the Mines Act applies - an inspector under that Act [the *Mines Regulation Act 1964* or the *Mining and Quarrying Safety and Health Act 1999*, depending on commencement of the latter]; or
- (e) another person, appointed under an Act, prescribed under a regulation.

This power of entry is confined to an emergency involving hazardous materials. Entry without delay is essential to prevent the emergency from escalating and to minimise its consequences.

Does the legislation make rights and liberties, or obligations, dependent on administrative power, only if the power is sufficiently defined and subject to appropriate review?

- 5. Under clause 106, an authorised officer may take direct action if the officer reasonably believes –
 - (a) a dangerous situation exists at a place; and
 - (b) the dangerous situation poses serious danger; and
 - (c) having regard to the threat of serious danger, it is necessary for the authorised officer to take appropriate action without delay to prevent, remove or minimise the dangerous situation.

The Bill safeguards the rights and liberties of individuals in several ways. For an authorised officer to take direct action, the situation must present ‘serious danger’. Serious danger is danger that has the potential to lead to ‘serious harm’ (a high level of harm). The officer must reasonably believe that the danger posed by the situation might lead to a person’s death or hospitalisation or harm to property or the environment, incurring costs of more than \$50,000. The officer must also reasonably believe that direct action is urgently required. To determine the extent of the action to be taken, the officer must consult with the officer’s supervisor and the occupier of the facility, as far as reasonably practicable.

Does the legislation reverse the onus of proof in criminal proceedings without adequate justification?

6. Clause 28(3) states that sections 23 and 24 of the Criminal Code do not apply to a contravention of clause 18 ('Discharge of obligations'). These two sections of the Criminal Code relate to intention and mistake of fact. In effect, they place the onus on the prosecution to prove that:
 - (a) an act or omission did not occur independently of the exercise of a person's will; or
 - (b) the event did not occur by accident; or
 - (c) an act or omission did not stem from an honest and reasonable, but mistaken, belief in the existence of any state of things.

Section 18 of the Dangerous Goods Safety Management Bill imposes high penalties for breaches of safety obligations with extremely severe consequences, such as multiple deaths and serious harm to property or the environment. In the case of such severe consequences, a speedy investigation (and prosecution, if appropriate) is essential to determine causes and prevent similar occurrences in the future. If the prosecution has to disprove a lack of intention or a mistake or fact, the process of attaching responsibility can be prolonged, if not delayed indefinitely. These two sections of the Criminal Code are excluded from applying to offences against section 18 to accelerate the investigative process and to enable the persons in the positions of responsibility (primarily, the occupiers) to be held responsible. This exclusion is consistent with exclusions in other modern safety legislation, such as the *Workplace Health and Safety Act*, the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*. The exclusion of these sections of the Criminal Code is balanced by the fact that defences are written into the Bill in section 28(2). It is a defence for a person to prove that the commission of the offence was due to causes over which the person had no control.

7. Under clause 107, the State or local government may recover costs reasonably incurred in taking direct action to prevent, remove or minimise a dangerous situation. Costs may be recovered jointly and severally from –
 - (a) the person who owned the hazardous materials involved in the dangerous situation;
 - (b) the occupier of the place of the dangerous situation;
 - (c) the person who caused the dangerous situation.

Clause 107(4) provides the defence against recovery of costs. The person is required to establish that, exercising reasonable care, he or she could not have prevented the situation, or the situation was due to the act or default of another person (other than an employee or agent). This reversal of the onus of proof is balanced by the provision of the above defence.

8. Under clause 172, an act committed or omitted on behalf of another person by a representative of the person is taken to have been committed or omitted also by the person. Like clause 173 (see paragraph 9), this is a standard feature of modern safety legislation, such as the *Workplace Health and Safety Act*, the *Coal Mining Safety and Health Act* and the *Mining and Quarrying Safety and Health Act*. The clause is designed to assist in meeting evidentiary requirements when attempting to penalise a person for breach of a safety obligation under the Bill. Clause 172(3) allows the defence that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
9. Under clause 173(3), evidence that a corporation has been convicted of an offence against a provision of the Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision. This clause is necessary in this Bill to ensure that executive officers of a company do not escape personal liability by hiding behind a corporate structure. The persons most likely to have knowledge of the structure, operations and distribution of responsibilities in a company are its executive officers. Therefore, it is appropriate that they bear the burden of proof regarding their -
 - (a) exercise of diligence to ensure compliance; or
 - (b) inability to influence the corporation in relation to the offence.

These are defences under section 173(4).

Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?

10. The Bill provides for breaches of the regulation to incur penalties of up to 200 penalty units. While this maximum limit might appear high for regulatory offences, it is consistent with the maximum for regulatory offences in other legislation protecting the community from harm from hazardous materials, such as: the *Explosives Act 1999* (200 penalty units); the *Coal Mining Safety and Health Act* and the *Mining and Quarrying Safety and Health Act* (both 400 penalty units); and the *Environmental Protection Act 1994* (165 penalty units). Furthermore, it is consistent with the high level of penalties in the Bill (which range from 3000 penalty units for a contravention causing

multiple deaths and serious harm to property or the environment to 750 penalty units for a contravention causing serious harm to property or the environment). The level of penalty units in the Bill and the maximum proposed for the regulation reflect the seriousness of the consequences of a contravention.

11. A facility may be classified as a DGL or a MHF if the quantities of materials stored or handled at the facility exceed thresholds for those materials, as specified in a regulation under the Bill. In the interests of national uniformity, the thresholds for DGLs and MHFs will be based, respectively, on schedules in the dangerous goods national standard and the MHF national standard. The thresholds will be contained in the regulation rather than the Bill, because some flexibility is necessary to accommodate possible changes to these national standards. Furthermore, the schedules of the thresholds will include technical detail. Therefore, they are more in keeping with the nature of the regulation, than the broad framework provided by the Bill.

Does the Bill subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly?

12. Under clause 29, the Minister may make standards ('recognised standards') stating ways to achieve an acceptable level of risk. The Coal Mining Safety and Health Act and the Mining and Quarrying Safety and Health Act contain similar clauses. Many of the standards that may be recognised under this Bill exist in some form already, for example, some industry codes of practice and Australian Standards. However, they will not become recognised standards, automatically. They will need to undergo a formal recognition process, which will accommodate input from industry and the community. The DGWG, which includes representatives of both groups, will review potential standards for recognition, as well as developing new standards. Any new standards developed will undergo a public consultation phase. All recognised standards would be subject to regular review. The making of standards is preferable to the development of subordinate legislation for the following reasons:
 - (a) It enables extensive consultation in the review and development of material.
 - (b) The highly technical and specialist requirements (contained in codes, etc.) are difficult to translate to legislative format.
 - (c) Numerous standards will be considered for recognition.

Consultation

Consultation has occurred on a comprehensive national scale in regard to the two national standards on which the legislation is based. Industry and community bodies and Government agencies in Queensland have also been consulted in the development of this legislation.

Purpose and Intended Operation of Each Clause

PART 1—PRELIMINARY

Division I—Introduction

Clause 1 states the short title of the Bill.

Clause 2 provides for the commencement of the Bill.

Division 2—Application and operation of the Bill

Clause 3 identifies the circumstances to which the Bill does not apply.

Sub-section (1) indicates that the Bill does not apply to mining and petroleum leases or gas pipelines, all of which are covered by specific legislation administered by the Department of Mines and Energy (DME).

Sub-section (2) provides for the situation where the Bill and legislation covering specific dangerous goods are in conflict. It recognises that the provisions of legislation which covers specific hazards (for example, explosives) should be more precise than the more general provisions of the DGSM Bill. In this situation, the specified Act must take precedence, but only to the extent of the conflict.

Sub-section (3) provides for a reduction of overlaps between this Bill and the specified legislation. It will simplify compliance with safety requirements for the gas and explosives industries that deal mainly with DME and the radiation industry that deals mainly with Queensland Health. If the safety obligations in this Bill and the nominated legislation are equivalent, compliance with the nominated legislation is taken to be compliance with this legislation.

Since the requirements for major hazard facilities are set out only in this Bill, sub-section (4) limits the application of this equivalence policy to sites other than major hazard facilities.

Clause 4 provides for the binding of all persons, including the State, and as far as the Queensland legislative powers permit, the Commonwealth and the other States.

Clause 5 outlines the three types of situations to which the Bill applies.

Clause 6 identifies the people to whom the Bill applies, namely anyone involved in storing or handling hazardous materials, who may affect people's safety, or harm property or the environment.

Division 3—Objective of the Bill

Clause 7, sub-section 1 identifies the overall objective of the Bill. Sub-section (2) provides further detail of the objective.

Division 4—Interpretation

Clause 8 states that the dictionary explaining the meaning of key words is located in Schedule 2.

Clauses 9 to 15 define words important to understanding the Bill.

Clause 9 defines the term “dangerous goods”.

Clause 10 defines the term “environment”.

Clause 11 defines the term “hazard”.

Clause 12 defines the term “hazardous material”.

Clause 13 defines the term “major accident”.

Clause 14 defines the term “occupier”.

Clause 15 defines the term “risk”.

PART 2—SAFETY OBLIGATIONS

Division 1—Preliminary

Clause 16 outlines the people who have safety obligations under this Bill.

Sub-section (1) outlines the broad safety obligation of all persons involved with the storage or handling of hazardous materials or with storage or handling systems.

Sub-section (2) defines the persons who have additional obligations under the Bill.

Sub-sections (3) and (4) note that further obligations for the occupiers of major hazard facilities and dangerous goods locations are set out in Parts 4 and 5, respectively.

Clause 17 defines an “acceptable level of risk”.

Clause 18 sets out the maximum penalties which can be applied for contravention of the legislation.

Sub-sections (1) (a) to (f) set out the penalties for contraventions causing harm to people, property or the environment (“circumstances of aggravation”). The severity of the penalties is directly related to the severity of the consequences.

Sub-sections (2) and (3) accommodate situations where a person is charged with contravening sub-section (1), but the circumstances of aggravation are not proven. The maximum penalty that can be imposed is the monetary penalty for the specific provision of the Act with which the person has failed to comply if that provision provides for a penalty.

Clause 19 notes that a person may be subject to more than one safety obligation. For example, the person may be both a designer of storage and handling systems and an occupier of a major hazard facility.

Clause 20 states that no safety obligations imposed under this Bill relieve another person of their safety obligations under the Bill.

Clause 21 describes how a safety obligation can be discharged by complying with the appropriate regulation or recognised standard.

Sub-section (3) allows an alternative but equivalent method to that set out in a recognised standard.

Clause 22 describes how a safety obligation can be discharged if there is no appropriate regulation or recognised standard.

Division 2—Obligations of occupiers and others

Clause 23 defines the obligations that apply to an occupier of a dangerous goods location or a major hazard facility.

Clause 24 defines the obligations of an employee or other person at a major hazard facility or dangerous goods location.

Clause 25 defines the obligations of manufacturers, importers and suppliers of dangerous goods.

Clause 26 defines the obligations of designers, manufacturers, importers, suppliers and installers of storage or handling systems for use at a dangerous goods location or a major hazard facility.

Clause 27 defines the obligation of a supplier and installer of a storage or handling system who becomes aware of a hazard or defect associated with the system.

Division 3—Defences

Clause 28 provides for a defence in a proceeding against a person for a contravention of an obligation under Division 1 or 2.

PART 3—RECOGNISED STANDARDS

Clause 29 enables the Minister to recognise standards (such as industry codes of practice or Australian Standards) as legitimate ways to achieve an acceptable level of risk.

Clause 30 defines the circumstances when a recognised standard is admissible in evidence in a proceeding under the Bill.

PART 4—MAJOR HAZARD FACILITIES

Division 1—Classification of places as major hazard facilities

Clause 31 defines the terms “major hazard facility” and “possible major hazard facility”.

Clause 32 allows the chief executive to classify a place as a major hazard facility.

Sub-sections (2), (3) and (4) set out the method by which this is to be achieved (consultation, gazette notice, written notice to the occupier, etc.).

Sub-section (5) requires the chief executive to provide written declaration to the occupier if the facility is not classified as a major hazard facility.

Clause 33 provides the grounds for the chief executive to classify a place as a major hazard facility.

Sub-section (1) requires the chief executive to classify a facility as a major hazard facility if the quantity of hazardous materials stored or handled or likely to be stored or handled exceeds the quantity prescribed under a regulation and a hazardous materials emergency at the facility could pose a risk to people, property or the environment off-site.

Sub-section (2) enables the chief executive to classify a facility as a major hazard facility (e.g. a facility with below threshold quantities) by taking into account the potential for a hazardous materials emergency and the risk to people, property or the environment posed by a hazardous materials emergency.

Clause 34 provides the grounds and method by which the chief executive may declassify a major hazard facility.

Division 2—Notification to chief executive about possible major hazard facilities

Clause 35 defines the obligation of the occupier of an existing possible major hazard facility to notify the chief executive of the facility within a specified time frame. It also prescribes the maximum penalty that can be imposed for a breach of this obligation.

Clause 36 defines the obligation of the occupier of a new possible major hazard facility to notify the chief executive of the facility within a specified time frame. It also prescribes the maximum penalty that can be imposed for a breach of this obligation.

Clause 37 defines the obligation of the occupier of a facility (other than a major hazard facility) to notify the chief executive of certain upgrades of facilities. It deals with two types of upgrades: a change whereby a facility becomes a possible major hazard facility; or (for a facility declared previously to be not a major hazard facility) a change in the quantities or

types of hazardous materials stored or handled from those stated in the declaration.

Clause 38 defines the obligation of the occupier of a major hazard facility to notify the chief executive of a modification to the facility that would significantly alter the risk.

Clause 39 defines the obligation of the occupier of a major hazard facility to comply with the chief executive's request for information about a possible major hazard facility. This information would assist the chief executive to decide whether the facility should be classified as a major hazard facility.

Division 3—Other obligations of occupiers of major hazard facilities

Clause 40 provides for further obligations to be imposed on an occupier of a major hazard facility.

Clause 41 defines the occupier's obligations relating to a systematic risk assessment.

Sub-section (1) requires the occupier to consult with employees at the facility in carrying out, documenting, reviewing and updating the systematic risk assessment. It also outlines what the assessment is required to do (i.e. identify hazards that might lead to a major accident and assess the likelihood of a major accident and its consequences).

Sub-sections (2) and (3) specify the time frames for carrying out and documenting the systematic risk assessment and the circumstances in which it is to be reviewed and updated.

Clause 42 defines the time frames for establishing and documenting emergency plans and procedures.

Clause 43 requires the occupier to consult with the emergency services and people or property owners in the vicinity of the major hazard facility in establishing, maintaining and documenting emergency plans and procedures.

Clause 44 defines the standard of training and education that must be provided by an occupier and the circumstances in which it must be provided, reviewed and updated.

Sub-section (2) requires the occupier to keep training records.

Clause 45 defines the occupier's obligations relating to a safety management system (a documented comprehensive integrated system for managing safety at the facility). It specifies the time frames for developing and implementing the safety management system and the circumstances in which it is to be reviewed and updated.

Clause 46 defines the occupier's obligations to consult with, and provide information about safety measures to, people potentially affected by an accident. This includes the action to be taken in the event of a major accident.

Sub-sections (3) and (4) specify the time frames for consulting and providing information under normal operations, as well as in the event of a major accident.

Clause 47 defines the obligation of the occupier of a major hazard facility relating to a safety report.

Sub-section (1) requires that sufficient detail be provided to assess the acceptability of risk at the facility and the fulfilment of the occupier's obligations with regard to: the information, education, training, etc. provided to employees; the systematic risk assessment; emergency plans and procedures; the consultation with and information provided to the community; and the safety management system.

Sub-section (2) specifies the time frames for providing the safety report to the chief executive.

Sub-sections (3) and (4) specify the circumstances in which the safety report is to be reviewed and updated.

Sub-section (5) specifies the people to be consulted in preparing and updating the report.

Sub-section (6) requires the occupier to keep a written record of the consultation required under sub-section (5).

PART 5—STORAGE AND HANDLING OF DANGEROUS GOODS AND COMBUSTIBLE LIQUIDS

Division 1—Identification of dangerous goods locations

Clause 48 defines the term “dangerous goods location”.

Sub-section (2) indicates that a major hazard facility is not a dangerous goods location.

Division 2—Notification to chief executive about possible dangerous goods locations

Clause 49 defines the obligation of the occupier of a possible dangerous goods location to notify the chief executive of the dangerous goods or combustible liquids stored or handled at that location.

Clause 50 defines the obligation of the occupier of a possible dangerous goods location to supply details of the dangerous goods or combustible liquids at that location in response to a request from the chief executive.

Division 3—Extra obligations of occupiers of dangerous goods locations

Clause 51 provides for further obligations to be imposed on the occupier of a dangerous goods location.

Clause 52 defines the time frames for the establishment and implementation of emergency plans and procedures for dangerous goods locations.

Clause 53 outlines details of the safety management system and defines the occupier's related obligations for dangerous goods locations.

Sub-section (2) specifies the time frames for developing and implementing the safety management system for dangerous goods locations.

PART 6—AUTHORISED OFFICERS AND DIRECTIVES

Division 1—Authorised officers

Clause 54 lists the categories of persons whom the chief executive may appoint as authorised officers.

Sub-section (2) enables the chief executive of a local government to appoint an employee of the local government as an authorised officer in relation to a matter for which the administration and enforcement has been devolved to local government.

Clause 55 defines the qualifications or training required for an administering executive to appoint an authorised officer. [The “administering executive” will be the chief executive, except for matters devolved to local government, in which case it will be the local government’s chief executive officer.]

Clause 56 states the conditions under which an authorised officer holds office. It recognises that the conditions of appointment may link appointment as an authorised officer to the holding of another office (the “main office”).

Clause 57 provides the authorised officer with powers under the Bill and defines the limits of those powers.

Clause 58 defines the functions of authorised officers.

Clause 59 requires the administering executive to give each authorised officer an identity card.

Sub-section (2) describes the content of the identity card.

Sub-section (3) enables the issue of a single identity card for a person with powers under this Bill and other Acts.

Clause 60 requires a person ceasing to be an authorised officer to return the identity card to the administering executive.

Clause 61 requires an authorised officer to produce or display an identity card when exercising a power under the Bill.

Division 2—Powers of authorised officers

Subdivision 1—Entry of places

Clause 62 defines the conditions under which an authorised officer has the power to enter places.

Subdivision 2—Procedure for entry

Clause 63 defines the procedures to be observed by an authorised officer seeking the consent of an occupier to enter a place.

Clause 64 enables an authorised officer to apply to a magistrate for a warrant to enter a place.

Sub-sections (2) and (3) define the procedures for applying for a warrant and the conditions that may be imposed by a magistrate.

Clause 65 defines the circumstances under which a magistrate may issue a warrant and the information to be provided on the warrant.

Clause 66 enables an authorised officer to apply to a magistrate for a special warrant, using electronic communications, under urgent or special circumstances.

Sub-sections (2) to (8) define the procedures to be adopted.

Sub-section (9) defines the circumstances when the court must find that an authorised officer did not exercise power under a special warrant.

Clause 67 sets out the procedure to be observed by an authorised officer before entry into a place with a warrant.

Subdivision 3—General powers

Clause 68 defines the general powers that may be exercised by an authorised officer after entering a major hazard facility, dangerous goods location or other place if consent is given or the entry is otherwise authorised.

Clause 69 requires a person to give reasonable help to an authorised officer in the exercise of the officer's powers, unless the person has a reasonable excuse.

Clause 70 requires a person to answer questions to assist an authorised officer to help determine whether or not the Act is being complied with, unless the person has a reasonable excuse.

Subdivision 4—Powers to seize evidence

Clause 71 provides for the seizure of a thing at a place entered without the occupier's consent or a warrant, if the thing is believed to be evidence of an offence against this Act.

Clause 72 provides for the seizure of things at places that may only be entered with consent or a warrant.

Clause 73 provides for the authorised officer to move a thing seized or restrict access to it.

Clause 74 prohibits tampering with things seized to which access has been restricted.

Clause 75 defines the powers of an authorised officer to support the seizure of a thing.

Clause 76 provides for an authorised officer to require a seized item be returned to the place from which it was taken.

Clause 77 requires an authorised officer to issue a receipt for a thing seized.

Clause 78 provides for the forfeiture by the owner, in certain circumstances, of a thing seized.

Clause 79 defines the time frames for the return to its owner of a thing that has been seized but not forfeited.

Clause 80 requires an authorised officer to allow an owner access to a thing that has been seized.

Subdivision 5—Power to obtain information

Clause 81 provides an authorised officer with the power to require a person to state the person's name and residential address in specified circumstances.

Clause 82 requires a person to provide name and address details, if required to do so by an authorised officer. It prescribes the maximum penalty for failure to comply, without a reasonable excuse.

Clause 83 provides an authorised officer with the power to require a person who has safety obligations under the Bill to produce documents under specified circumstances.

Clause 84 requires a person to produce documents, if required to do so by an authorised officer. It prescribes the maximum penalty for failure to comply, without a reasonable excuse.

Clause 85 requires a person to certify documents, if required to do so by an authorised officer. It prescribes the maximum penalty for failure to comply, without a reasonable excuse.

Clause 86 provides an authorised officer with the power to require a person's attendance to answer questions.

Clause 87 requires a person to attend, if required to do so by an authorised officer. It prescribes the maximum penalty for failure to comply, without a reasonable excuse.

Division 3—Directives by authorised officers

Subdivision 1—Power to give and way of giving directives

Clause 88 provides for giving a directive by an authorised officer.

Clause 89 requires a directive to be given in writing to the occupier of the major hazard facility or dangerous goods location.

Subsection (2) provides an exception. It enables a directive for the urgent situations covered in clauses 91, 96, 97 and 98 to be given in the way specified in each of these clauses.

Subdivision 2—Matters for which directives may be given

Clause 90 provides for an authorised officer to require an occupier of a major hazard facility or dangerous goods location to carry out a stated assessment or to give stated information to determine the level of risk if a risk from the facility or location is suspected to be not at an acceptable level.

Clause 91 provides for an authorised officer to require an occupier of a major hazard facility or a dangerous goods location to reduce the risk from the facility or location if the risk is believed to be not at an acceptable level.

Clause 92 provides for an authorised officer to give a directive to review the safety management system of a major hazard facility or dangerous goods location if it is believed to be inadequate.

Clause 93 provides for an authorised officer to give a directive to review the systematic risk assessment for a major hazard facility if it is believed to be inadequate.

Clause 94 provides for an authorised officer to give a directive to review emergency plans and procedures for a major hazard facility or dangerous goods location if they are believed to be inadequate.

Clause 95 provides for an authorised officer to give a directive to review the safety report for a major hazard facility if it is believed to be inadequate.

Clause 96 provides for an authorised officer to give a directive to the person in charge of a storage or handling system to stop the operation of the system if it is believed to have caused, or to be likely to cause, harm to a person, requiring medical treatment by a doctor.

Clause 97 allows an authorised officer to give a directive to the occupier of a major hazard facility or a dangerous goods location to suspend operations if the risk from operations is believed to be not at an acceptable level.

Clause 98 provides for an authorised officer to give a directive to the occupier of a major hazard facility or dangerous goods location to isolate the site of a major accident or near miss for the preservation of evidence.

Clause 99 enables an authorised officer to give a directive to provide an independent study or audit relating to safety issues at a major hazard facility or dangerous goods location.

Subdivision 3—Recording of directives and other matters

Clause 100 requires an occupier of a major hazard facility or dangerous goods location to keep an accurate record of all directives given, under this Act, by an authorised officer to the occupier.

Clause 101 specifies the time frames for complying with a directive and for recording the action taken to comply.

Sub-section (3) requires the occupier of a major hazard facility or dangerous goods location to make available, for inspection by employees, copies of written directives and written records of action taken.

Subdivision 4—Review of directives

Clause 102 allows a person given a directive by an authorised officer to apply for a review of the directive.

Clause 103 outlines the procedures and timing for the review of a directive.

Clause 104 specifies the time frames for the administering executive to review a directive and to give notice of the review decision.

Clause 105 allows a person who has applied for a review of a directive to apply for a stay of the directive in certain circumstances.

Sub-section (6) disallows the staying of a directive given under clauses 97 or 98.

Division 4—General enforcement offences

Clause 106 provides for an authorised officer to take direct action to prevent, remove or minimise a dangerous situation.

Sub-section (1) specifies the circumstances when such action may be taken (i.e. when it poses serious danger and urgent action is necessary).

Sub-section (4) requires the authorised officer to consult, as far as practicable, with the occupier and the administering executive in deciding the extent of action to be taken.

Clause 107 provides for State or local government to recover costs incurred in action taken to prevent, remove or minimise a dangerous situation.

Sub-section (4) indicates the circumstances when costs are not recoverable.

Clause 108 defines the procedures to be followed when an authorised officer damages property while exercising the officer's powers.

Clause 109 provides for a person to claim compensation for damage caused by an authorised officer in the exercise of the officer's power.

Sub-section (6) disallows a person from whom costs are recovered by the State or local government under clause 107 from claiming compensation.

Clause 110 prohibits providing false or misleading statements to an authorised officer and prescribes the maximum penalty for non-compliance.

Clause 111 prohibits providing false or misleading documents to an authorised officer and prescribes the maximum penalty for non-compliance.

Clause 112 prohibits obstructing an authorised officer in the exercise of a power under this Bill, without a reasonable excuse. It also prescribes the maximum penalty for non-compliance.

PART 7—HAZARDOUS MATERIALS EMERGENCIES

Division 1—Purpose

Clause 113 defines the purpose of this part of the Bill. It is to provide for the authorisation of scientific / technical advisers (hazmat advisers) who provide advice and help at chemical incidents.

Division 2—Appointment of persons as hazmat advisers

Clause 114 provides for the chief executive to appoint hazardous materials emergency advisers ('hazmat advisers').

Clause 115 defines the qualifications or training required for the chief executive to appoint a person as a hazmat adviser.

Clause 116 defines the conditions of appointment of a hazmat adviser.

Clause 117 provides the authorised officer with powers under the Bill and defines the limits of those powers.

Clause 118 describes the function of hazmat advisers.

Clause 119 requires the chief executive to give each hazmat adviser an identity card.

Clause 120 requires a person ceasing to be a hazmat adviser to return the identity card to the chief executive. It defines the time frames for the return of the card.

Clause 121 requires a hazmat adviser to produce or display an identity card when exercising a power under the Bill.

Division 2—Powers of hazmat advisers

Subdivision 1—Entry of places

Clause 122 defines the powers of entry of a hazmat adviser to a place at which a hazardous material emergency is occurring. Hazmat advisers may only enter at the request of a “prescribed person”.

Sub-section (2) provides a list of prescribed persons, such as fire officers or police officers who would be in charge of the emergency. Sub-sections (2)(c) and (2)(d) enable entry to mine sites which are otherwise excluded from the application of the Bill.

Subdivision 2—General powers

Clause 123 defines the general powers that may be exercised by a hazmat adviser after entering a place.

Clause 124 requires a person to provide help if required by a hazmat adviser. It also prescribes the maximum penalty for failure to comply, without a reasonable excuse.

Clause 125 requires a person not to obstruct a hazmat adviser. It prescribes the maximum penalty for failure to comply, without a reasonable excuse.

PART 8—INVESTIGATIONS AND INQUIRIES INTO MAJOR ACCIDENTS AND NEAR MISSES

Division 1—Requirement about major accidents and near misses

Clause 126 requires the occupier of a major hazard facility to notify the chief executive of a major accident, unless the major accident is notified under the *Explosives Act 1999*, the *Gas Act 1965*, the *Petroleum Act 1923* or the *Radiation Safety Act 1999*.

Clause 127 requires the occupier of a major hazard facility to record a near miss.

Division 2—Inquiries by board of inquiry

Clause 128 provides for the Minister to establish, by gazette notice, a board of inquiry to inquire into a major accident.

Clause 129 defines the role of a board of inquiry.

Clause 130 provides for the remuneration and conditions of appointment of board members.

Clause 131 provides for staffing and financial matters to be arranged to support the operation of the board of inquiry.

Clause 132 defines the procedures to be observed by the board of inquiry in conducting its inquiry.

Clause 133 requires notice of the inquiry to be given to persons concerned in the major accident (the subject of the inquiry) or others it is believed should have the opportunity to appear.

Clause 134 requires an inquiry to be held in public, other than in special circumstances.

Clause 135 provides for the protection and immunity of members of boards and legal representatives and the protection of witnesses.

Clause 136 requires a board of inquiry to keep a record of proceedings.

Clause 137 requires the board to allow the occupier of the site of the major accident the opportunity of making a defence against all claims made.

Clause 138 defines the powers of a board of inquiry.

Clause 139 provides for notice to be given to an inquiry witness to require the witness to attend the inquiry.

Clause 140 provides for the board to inspect, copy, and take possession of documents or things produced to the board at an inquiry.

Clause 141 provides for an inquiry to continue, despite court or tribunal proceedings, unless otherwise ordered.

Clause 142 requires a person given notice to attend an inquiry to attend the inquiry, unless the person has a reasonable excuse.

Sub-section (2) requires a person to take an oath when required, answer questions or produce documents or things, unless the person has a reasonable excuse.

Sub-section (3) allows self-incrimination as a reasonable excuse for failing to answer questions or producing documents or things.

Clause 143 prohibits a person from stating to the board of inquiry anything that the persons knows to be false or misleading. It also prescribes the maximum penalty for non-compliance.

Clause 144 prohibits a person from giving documents to the board of inquiry that the person knows to be false or misleading. It also prescribes the maximum penalty for non-compliance.

Clause 145 prohibits a person from displaying contempt of the board of inquiry, such as insulting or deliberately interrupting the board.

Clause 146 provides for the board of inquiry to report offences and to make available all relevant material to the appropriate officers of the Crown.

Clause 147 states that an inquiry is not affected by a change in the membership of a board of inquiry.

PART 9—APPEALS

Division 1—Appeals against classification as a major hazard facility

Clause 148 provides for a person aggrieved by a chief executive's decision to classify a facility as a major hazard facility to appeal against that decision.

Clause 149 provides for the appeal against a classification of a facility as a major hazard facility to be made to a Magistrates Court near the facility.

Clause 150 details the means of starting the appeal process.

Clause 151 provides for the Magistrates Court to grant a stay of a decision appealed against.

Clause 152 defines the hearing procedures for an appeal.

Clause 153 defines the powers of the Magistrates Court in deciding an appeal.

Clause 154 limits the ability to appeal to a higher court to a question of law.

Division 2—Appeals against review decisions

Clause 155 provides for a person whose interests are affected by a review decision of the administering executive to appeal to the Industrial Court.

Clause 156 details the means of starting the appeal process.

Clause 157 provides for the Industrial Court to grant a stay of a review decision appealed against.

Clause 158 defines the hearing procedures for an appeal.

Clause 159 provides for the appointment of specialist assessors to assist in deciding the appeal.

Clause 160 defines the powers of the Industrial Court in deciding an appeal.

PART 10—LEGAL PROCEEDINGS

Division 1—Evidence

Clause 161 states that it is not necessary to prove, in a proceeding, the appointment or authority of the administering executive, an authorised officer or a hazmat adviser.

Clause 162 states that it is not necessary to prove the signatures of the administering executive, an authorised officer or a hazmat adviser.

Clause 163 states that evidentiary aids, such as certificates purported to be signed by the chief executive and stating specified matters are taken to be evidence of the matters.

Clause 164 defines the circumstances when an expert report is admissible in evidence.

Clause 165 states that the production of a signed analyst's report stating specified details is evidence of the details.

Division 2—Proceedings

Clause 166 defines indictable and summary offences.

Clause 167 describes the proceedings for indictable offences.

Clause 168 defines the persons who may summarily hear indictable offence proceedings.

Clause 169 defines the time frame for starting summary proceedings.

Clause 170 provides for the forfeiture to the State of things relating to an offence on conviction of a person for the offence.

Clause 171 provides for dealing with things forfeited to the State.

Clause 172 enables actions committed or omitted by a representative of a person to be taken to be omitted or committed by the person, unless the person proves that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

Sub-section (3) allows the defence that the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

Clause 173 provides for executive officers of a corporation which has committed an offence to be charged with the offence of failing to ensure the corporation's compliance.

Sub-section (4) provides the following defences: that the officer (who was in a position to influence the conduct of the corporation) exercised reasonable diligence to ensure the corporation complied; or the officer was not in a position to influence the conduct of the corporation.

Clause 174 allows the court to order a person convicted of an offence to pay a department's, another department's or a local government's reasonable costs of investigating the offence, including the costs of preparing for the prosecution.

Clause 175 defines the circumstances when fines are payable to local government.

PART 11—MISCELLANEOUS

Clause 176 prescribes the ways in which documents required to be given to a person may be transmitted by facsimile.

Clause 177 makes it an offence to encourage refusal to answer questions by an authorised officer or hazmat adviser, except for the provision of legal advice to an employee by a lawyer. It prescribes the maximum penalty for non-compliance.

Clause 178 makes it an offence to falsify documents.

Clause 179 makes it an offence to impersonate an authorised officer or a hazmat adviser.

Clause 180 provides for the chief executive to designate an area surrounding a major hazard facility as a “MHF consultation zone”. It requires the chief executive to provide a notice to the relevant local government about the consultation zone to be noted in its planning scheme.

Clause 181 provides for the chief executive to delegate powers under the Bill to specified persons.

Clause 182 provides for the Governor in Council, by regulation, to devolve the administration and enforcement of specified matters relating to flammable and combustible liquids to a local government.

Clause 183 provides for the chief executive officer of a local government to delegate powers to specified persons for matters devolved in clause 182.

Clause 184 provides for an employee or another person at a major hazard facility or dangerous goods location to report, to an authorised officer, offences against this Act.

Sub-section (4) prohibits making a false or frivolous representation, for which a maximum penalty is imposed.

Clause 185 provides for the protection of an official from civil liability for acts or omissions made honestly and without negligence.

Sub-section (3) defines an “official”.

Clause 186 provides for the chief executive to approve forms for use under the Bill.

Clause 187 provides for the making of regulations by the Governor-in-Council.

PART 12—REPEAL

Clause 188 provides for the repeal of the *Building (Flammable and Combustible Liquids) Regulation 1994*.

PART 13—AMENDMENT OF ACTS AND REGULATIONS

Clause 189 notes that Schedule 1 contains amendments to other Acts and regulations necessary for the implementation of this legislation.

SCHEDULE 1 ‘AMENDMENTS OF ACTS AND REGULATIONS’ identifies amendments to other Acts and regulations.

SCHEDULE 2, ‘DICTIONARY’, defines the meanings of particular words used in this Bill.