



REPORT OF THE  
STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

IN RELATION TO THE

***DANGEROUS GOODS (TRANSPORT) BILL 1998 AND THE DANGEROUS  
GOODS (TRANSPORT) (CONSEQUENTIAL PROVISIONS) BILL 1998***

Presented by the Hon Murray Nixon (Chairman)

Report 27

## **STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS**

### **Date first appointed:**

21 December 1989

### **Terms of Reference:**

1. The functions of the committee are to inquire into and report on:
  - (a) the constitutional law, customs and usages of Western Australia;
  - (b) the constitutional or legal relationships between Western Australia and the Commonwealth, the States and Territories,  
and any related matter or issue;
  - (c) a bill to which SO 230 (c) applies but subject to SO 230 (d);
  - (d) any petition.
2. A petition stands referred after presentation. The committee may refer a petition to another standing committee where the subject matter of the petition is within the terms of reference of that standing committee. A standing committee to which a petition is referred shall report to the House as it thinks fit.

### **Members as at the date of this report:**

Hon Murray Nixon MLC (Chairman)  
Hon Ray Halligan MLC  
Hon Tom Helm MLC

### **Staff as at the date of this report:**

Penny Griffiths, Advisory/Research Officer  
Kelly Campbell, Committee Clerk

### **Address:**

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

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## **Report of the Legislative Council Constitutional Affairs Committee**

**in relation to the**

### ***Dangerous Goods (Transport) Bill 1998 and the Dangerous Goods (Transport) (Consequential Provisions) Bill 1998***

#### **1 Executive Summary**

- 1.1 The purpose of the *Dangerous Goods (Transport) Bill 1998* is to allow the implementation of public safety practices for the transport of dangerous goods as endorsed by the Ministerial Council on Road Transport. The Bill is intended to provide Western Australia with a nationally consistent scheme that will support Dangerous Goods Transport Regulations and the Australian Dangerous Goods Code.
- 1.2 Regulations under the Bill will implement the provisions of the Commonwealth Road Transport (Dangerous Goods) Regulations and the Australian Code for the Transport of Dangerous Goods. The Regulations will cover matters such as the classification, packaging, management of bulk containers, emergency procedures, marking of containers and vehicles and transport of dangerous goods.
- 1.3 The purpose of the *Dangerous Goods (Transport) (Consequential Provisions) Bill 1998* is to amend the *Explosives and Dangerous Goods Act 1961*. The Bill is intended to come into operation on the day on which the *Dangerous Goods (Transport) Bill 1998* comes into operation. Currently, all matters concerning explosives and dangerous goods are dealt with by the *Explosives and Dangerous Goods Act 1961*.

#### **2 Recommendations**

- 2.1 The Constitutional Affairs Committee's report makes comment and recommendations in relation to selected clauses of the *Dangerous Goods (Transport) Bill 1998* and the *Dangerous Goods (Transport) (Consequential Provisions) Bill*. The Committee has recommended that all clauses should be passed.

**Report of the Legislative Council  
Constitutional Affairs Committee**

**in relation to the**

***Dangerous Goods (Transport) Bill 1998 and the Dangerous Goods  
(Transport) (Consequential Provisions) Bill 1998***

**3 Reference and Procedure**

3.1 The *Dangerous Goods (Transport) Bill 1998* ("the Bill") and *Dangerous Goods (Transport) (Consequential Provisions) Bill 1998* ("the Consequential Bill") was referred to the Constitutional Affairs Committee ("the Committee") by the Legislative Council under Standing Order 230(d).

**4 Contents and Purpose of the Bill**

4.1 The purpose of the *Dangerous Goods (Transport) Bill 1998* is to allow the implementation of public safety practices for the transport of dangerous goods as endorsed by the Ministerial Council on Road Transport.

4.2 The aim of the Bill is to provide Western Australia with a nationally consistent scheme that will support Dangerous Goods Transport Regulations and the Australian Dangerous Goods Code.

4.3 The Regulations under the Bill will implement the provisions of the Commonwealth Road Transport (Dangerous Goods) Regulations and the Australian Code for the Transport of Dangerous Goods. The Regulations will cover matters such as the classification, packaging, management of bulk containers, emergency procedures, marking of containers and vehicles and transport of dangerous goods.

4.4 Key features of the dangerous goods transport reform include -

- a nationally consistent licensing scheme for drivers and vehicles;
- clear duties and responsibilities for all parties;
- legal liability on prime contractors and consignors;
- compulsory training for all dangerous goods tasks;
- rights for industry to appeal decisions; and
- national coordination of exemptions, approvals and other administrative decisions.

4.5 The purpose of the *Dangerous Goods (Transport) (Consequential Provisions) Bill 1998* is to amend the *Explosives and Dangerous Goods Act 1961*. The Consequential Bill is intended to come into operation on the day on which the *Dangerous Goods (Transport) Bill 1998* comes into operation. Currently, all matters concerning explosives and dangerous goods are dealt with by the *Explosives and Dangerous Goods Act 1961*.

4.6 The Bill contains 48 clauses in six (6) parts -

**Part 1: Preliminary**

**Part 2: Regulations**

**Part 3: Competent Authorities and authorized officers**

**Part 4: Exemptions**

**Part 5: Offences, penalties, evidence and procedure**

**Part 6: Miscellaneous**

4.7 Certain selected clauses of the Bill and Consequential Bill are outlined below and the Committee has provided comment and recommendations on each of these clauses. It should be noted that the remainder of the clauses not mentioned are recommended to be passed by the Committee.

4.8 The Committee has recommended that all clauses should be passed.

4.9 As part of the review, the Committee placed an advertisement in *The West Australian* newspaper inviting submissions on the Bill and the Consequential Bill. In response, the Committee received one (1) submission which was considered as part of the inquiry.

4.10 As part of the review, the Committee heard evidence from a number of witnesses concerning the operation of the Bill. The witnesses who appeared before the Committee were -

- Dr Peter Drygala, Acting Director, Explosives and Dangerous Goods Division, Department of Minerals and Energy;
- Ms Wendy Clarkson, Director Policy, WorkSafe Western Australia; and
- Mr Christopher Lee, Manufacturing Manager, Nufarm Ltd.

5 Selected clauses from the *Dangerous Goods (Transport) Bill 1998*

3. Interpretation (Cwlth s 6)

In this Act, unless the contrary intention appears —

“**authorized officer**” means an authorized officer appointed under section 11;

“**Competent Authority**” means a Competent Authority appointed under section 10;

“**dangerous goods**” means —

- (a) a substance or article prescribed as dangerous goods; or
- (b) a substance or article determined by a Competent Authority in accordance with the regulations to be dangerous goods;

“**dangerous situation**” means a situation involving the transport of dangerous goods that is causing or is likely to cause imminent risk of death or injury to a person, or harm to the environment or to property;

“**Gazette**” means the *Government Gazette* of Western Australia printed and published, or purporting to be printed and published, by the Government Printer and includes any supplement to the *Gazette*;

“**government authority**” means —

- (a) a department of the Public Service;
- (b) a body, whether corporate or unincorporate, or the holder of an office, post or position, being a body, office, post or position that is established or continued for a public purpose under a written law;
- (c) a local government;
- (d) a Competent Authority;

“**involvement in the transport of dangerous goods**” includes —

- (a) importing, or arranging for the importation of, dangerous goods into Western Australia;

- (b) marking packages and unit loads containing dangerous goods for transport, and placarding containers and vehicles in which dangerous goods are transported;
- (c) consigning dangerous goods for transport;
- (d) loading dangerous goods onto a vehicle, or into a container that is to be put on a vehicle, for transport or unloading dangerous goods that have been transported;
- (e) undertaking, or being responsible for, otherwise than as an employee or subcontractor, the transport of dangerous goods;
- (f) driving a vehicle carrying dangerous goods;
- (g) being the consignee of dangerous goods for transport;  
and
- (h) being involved as a director, secretary or manager of a body corporate, or other person who takes part in the management of a body corporate, that takes part in an activity covered by this definition;

**“Minister”** has the same definition as in the *Interpretation Act 1984*;

**“offence”** means an offence against this Act;

**“premises”** includes a structure, whether permanent or temporary, and land, but does not include a vehicle;

**“transport”**, in relation to dangerous goods, means the transport of the goods by vehicle and includes —

- (a) the packing, loading and unloading of the goods, and the transfer of the goods to or from a vehicle, for the purpose of their transport;
- (b) the marking of packages and unit loads containing dangerous goods, and the placarding of containers and vehicles in which dangerous goods are transported; and
- (c) other matters incidental to their transport;

**“vehicle”** means any thing used or capable of being used to transport people or things by air, road, rail or water and it does not matter how any such thing is moved or propelled.



**Note:** The references in section head notes to Commonwealth sections are references to sections in the *Road Transport Reform (Dangerous Goods) Act 1995 (Cwlth)* as amended by the *Road Transport Reform (Dangerous Goods) Amendment Act 1997 (Cwlth)*.

**Comment:** This clause defines *dangerous goods* as a substance or article prescribed as dangerous goods or a substance or article determined by a Competent Authority in accordance with the regulations to be dangerous goods.

A *dangerous situation* is defined as a situation involving the transport of dangerous goods that is causing or is likely to cause imminent risk of death or injury to a person, or harm to the environment or to property.

The *involvement in the transport of dangerous goods* is defined to include the following -

- importing, or arranging for the importation of, dangerous goods into Western Australia;
- marking packages and unit loads containing dangerous goods for transport, and placarding containers and vehicles in which dangerous goods are transported;
- consigning dangerous goods for transport;
- loading dangerous goods onto a vehicle, or into a container that is to be put on a vehicle, for transport or unloading dangerous goods that have been transported;
- undertaking, or being responsible for, otherwise than as an employee or sub-contractor, the transport of dangerous goods;
- driving a vehicle carrying dangerous goods;
- being the consignee of dangerous goods for transport; and
- being involved as a director, secretary or manager of a body corporate, or other person who takes part in the management of a body corporate, that takes part in an activity covered by this definition.

Clause 3 also contains a *note* which states that the references in section headnotes to Commonwealth sections are references to sections in the *Road Transport Reform (Dangerous Goods) Act 1995 (Cwlth)* as amended by the *Road Transport Reform (Dangerous Goods) Amendment Act 1997 (Cwlth)*. This note simply enables cross-referencing of similar provisions between the Commonwealth and State legislation concerning dangerous goods.

**Recommendation: the clause be passed**

## 6. *Scope of this Act (Cwlth s 10)*

- (1) This Act does not apply to dangerous goods that are in a container that is designed to form part of, and forms part of, the fuel or battery system

of a vehicle's engine, auxiliary engine, fuel burning appliance or other part of a vehicle's propulsion equipment.

- (2) Subject to subsection (3), if another written law relates to dangerous goods that law applies in addition to this Act, unless expressly provided otherwise.
- (3) If a provision of this Act is inconsistent with a provision of another written law —
  - (a) that relates to the storage and handling of dangerous goods; and
  - (b) that does not relate to the transport of dangerous goods, then the provision of the other written law prevails.
- (4) If a provision of this Act is inconsistent with a provision of another written law that relates to the transport of dangerous goods of a category that is prescribed for the purposes of this subsection by regulations under this Act, then the provision of the other written law prevails.

**Comment:** This clause provides that if a provision of this Act is inconsistent with a provision of another written law -

- (a) that relates to the storage and handling of dangerous goods; and
- (b) that does not relate to the transport of dangerous goods; then the provision of the other written law prevails.

Such other written laws include the *Occupational Safety and Health Act 1984* and the *Mines Safety and Inspection Act 1994*.

**Recommendation: the clause be passed**

## **8. Power to make Regulations (Cwlt s 11)**

- (1) The Governor may make regulations prescribing matters —
  - (a) required or permitted to be prescribed by this Act; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision relating to the following:

- (a) types and categories of dangerous goods and methods for deciding types and categories of dangerous goods;
- (b) the determination by a Competent Authority of which goods are dangerous goods or dangerous goods of a particular type, or are too dangerous to be transported or too dangerous to be transported in bulk;
- (c) the analysis and testing of dangerous goods;
- (d) goods too dangerous to be transported or too dangerous to be transported in bulk;
- (e) fees that are to be paid for things done under this Act;
- (f) the marking of packages and unit loads containing dangerous goods for transport and the placarding of containers and vehicles in which dangerous goods are transported;
- (g) containers and packaging used in the transport of dangerous goods;
- (h) the manufacture of vehicles and containers for use in the transport of dangerous goods;
- (i) voluntary accreditation schemes, including privileges to be accorded or sanctions to be imposed under the schemes and the cancellation or suspension of the schemes;
- (j) the loading of dangerous goods for, and the unloading of dangerous goods after, their transport;
- (k) the determination by a Competent Authority of routes along which, the areas in which and the times during which dangerous goods may or may not be transported;
- (l) procedures for the transport of dangerous goods, including but not limited to —
  - (i) the quantities and circumstances in which dangerous goods, or particular types of dangerous goods, may be transported; and
  - (ii) safety procedures and equipment;
- (m) the licensing of —
  - (i) vehicles and drivers for the purposes of the transport of dangerous goods; and
  - (ii) people responsible for the transport of dangerous goods or for vehicles used in that transport;

- (n) the mandatory accreditation of people involved in the transport of dangerous goods or particular aspects of that transport;
  - (o) the approval by a Competent Authority of the form in which applications are to be made to the Authority, and the form in which documents are to be issued by the Authority, for the purposes of the regulations;
  - (p) the approval by a Competent Authority of —
    - (i) packages, containers, equipment and other items used in relation to the transport of dangerous goods; and
    - (ii) facilities for and methods of testing or using packages, containers, equipment and other items used, and processes carried out, in relation to the transport of dangerous goods;
  - (q) documents required to be prepared or kept by people involved in the transport of dangerous goods and the approval by a Competent Authority of alternative documentation;
  - (r) obligations arising, and procedures to be followed, in the event of a dangerous situation in relation to the transport of dangerous goods;
  - (s) the training and qualifications required of authorized officers and other people performing functions under this Act;
  - (t) the training and qualifications required of people involved in, and the approval of training courses and qualifications relating to involvement in, the transport of dangerous goods;
  - (u) the recognition of laws of other jurisdictions relating to the transport of dangerous goods and of things done under those laws, and the giving effect to those things;
  - (v) the review of decisions under this Act;
  - (w) infringement notices, and documents and costs relating to infringement notices.
- (3) The regulations may apply, adopt or incorporate any or all of the provisions of a code, standard or rule relating to dangerous goods or to the transport of dangerous goods and those provisions may be applied, adopted or incorporated as they currently exist, as amended by the regulations, or as amended from time to time.

- (4) The regulations may —
- (a) prescribe a substance or article as being dangerous goods; or
  - (b) prescribe various types of dangerous goods, including goods that are too dangerous to be transported, and methods for deciding which dangerous goods fall into each type,
- by reference to such a code, standard or rule.
- (5) A reference in this section to a code, standard or rule includes a reference to one that is made outside Australia.

**Comment:** This clause is the principal regulation enabling clause to set out a number of matters in relation to which regulations may be made, including classification, labelling, packaging, storage and transport of dangerous goods, mandatory licensing of persons involved in the transport of dangerous goods and obligations arising in an emergency. The new provisions in the clause, not currently covered by the *Explosives and Dangerous Goods Act*, are enabling provisions for -

- goods too dangerous to be transported;
- the ability to control routes along which dangerous goods vehicles may move;
- training requirements;
- the recognition of laws of other jurisdictions relating to the transport of dangerous goods; and
- infringement notices.

**Recommendation: the clause be passed**

## **10. Appointment of Competent Authorities (Cwlth s 13)**

- (1) The Minister may, by notice in the *Gazette*, appoint Competent Authorities.
- (2) A Competent Authority —
- (a) may exercise all the powers and perform all the functions of an authorized officer; and

- (b) when exercising those powers or performing those functions, has all the immunities of an authorized officer.

**Comment:** This clause provides that the Minister may appoint Competent Authorities by notice in Gazette. It is intended that Competent Authorities will be responsible for the administration and enforcement of the proposed Act and the regulations. In Western Australia, the Chief Inspector of Explosives and Dangerous Goods is currently the Competent Authority for road and rail transport of dangerous goods.

**Recommendation: the clause be passed**

#### 11. *Appointment of authorized officers (Cwlth s 14)*

- (1) A Competent Authority may, by notice in the *Gazette*, appoint people, or a class of people, to be authorized officers.
- (2) In appointing authorized officers, a Competent Authority may specify that the appointment is subject to conditions or restrictions relating to —
- (a) the powers that are exercisable by those officers; or
  - (b) when, where and in what circumstances those officers may exercise powers.
- (3) A Competent Authority may issue identification cards containing prescribed details to authorized officers.

**Comment:** This clause allows for the appointment of authorised officers for the purpose of administering this Act and for placing restrictions on their powers.

**Recommendation: the clause be passed**

#### 15. *General powers of authorized officers (Cwlth s 18)*

- (1) An authorized officer may, to find out whether this Act is being complied with, enter and search premises if the authorized officer believes on reasonable grounds that he or she will find a thing that has been, is being or is likely to be used in relation to the transport of dangerous goods; but if premises are unattended or are a residence, the authorized officer may only enter if the occupier consents.

- (2) An authorized officer may enter and search premises, whether attended or not and whether or not a residence, if he or she believes on reasonable grounds that a dangerous situation exists as a result of anything occurring at the premises in relation to the transport of dangerous goods.
- (3) If an authorized officer believes on reasonable grounds that a vehicle has been, is being or is likely to be used for the transport of dangerous goods, the officer may, to find out whether this Act is being complied with —
  - (a) stop or detain the vehicle or cause the vehicle to be stopped or detained; and
  - (b) search the vehicle for dangerous goods or for documents, equipment or other things relating to the transport of dangerous goods.
- (4) If an authorized officer believes on reasonable grounds that a vehicle or equipment has been, is being or is likely to be used in relation to the transport of dangerous goods, the officer may, to find out whether this Act is being complied with, direct a person in charge or apparently in charge of the vehicle or equipment to move the vehicle or equipment, or to cause it to be moved, to a suitable location for inspection.
- (5) If the inspection is not to take place immediately, the direction must be given by notice in writing specifying the time, date and location for the inspection.
- (6) An authorized officer may carry out an inspection of the kind referred to in subsection (4) without notice if the authorized officer believes on reasonable grounds that a dangerous situation exists.
- (7) An authorized officer may, to find out whether this Act is being complied with, take samples, or direct a person in charge of premises or a vehicle or equipment referred to in subsection (1), (2), (3) or (4) or another person capable of doing so to give samples of a substance for examination and testing if the authorized officer believes on reasonable grounds that the substance is dangerous goods, ingredients of dangerous goods or goods that have been transported together with dangerous goods. The authorized officer must give a receipt in a form approved by a Competent Authority.
- (8) An authorized officer may, to find out whether this Act is being complied with, direct a person in charge of premises or a vehicle or equipment referred to in subsection (1), (2), (3) or (4) to produce documents.
- (9) The authorized officer may make copies of the documents, or remove them to make copies, but if they are removed the authorized officer must —

- (a) if it is practicable to do so, allow the person otherwise entitled to possession of the documents reasonable access to them; and
  - (b) give a receipt in a form approved by a Competent Authority.
- (10) An authorized officer may, to find out whether this Act is being complied with, leave at premises written directions to the occupier requiring the occupier, within a specified time —
- (a) to give samples of a substance the authorized officer believes on reasonable grounds to be dangerous goods, or ingredients of dangerous goods, for examination and testing; or
  - (b) to produce documents that may help the authorized officer.
- (11) An authorized officer may, in order to find out whether this Act is being complied with, direct a person to answer questions that may help the authorized officer.
- (12) An authorized officer may make photographic, mechanical or electronic recordings for a purpose incidental to the exercise of a power of the authorized officer under this section.

**Comment:** This clause confers certain powers on authorised officers to facilitate administration of this Act. This includes the power to enter and search premises, stop, detain, inspect and search vehicles, take samples, seize and copy documents and require persons to answer questions.

**Recommendation: the clause be passed**

## **17. Powers of authorized officer where offence suspected (Cwlth s 20)**

- (1) This section applies if an authorized officer believes on reasonable grounds that he or she will find evidence of an offence at premises, including on a vehicle or equipment at the premises.
- (2) The authorized officer may enter the premises and search for or test the evidence.

If the premises are unattended or are a residence, the authorized officer may only enter with the consent of the occupier of the premises or with the authority of a warrant issued under section 21.

- (3) The authorized officer may direct a person in charge or apparently in charge of the premises, vehicle or equipment or another person



capable of doing so to give samples of a substance for examination and testing.

**Comment:** This clause provides that if the premises are unattended, the authorised officer must obtain permission or a search warrant to enter the premises for the purpose of obtaining evidence.

It should be noted that, clause 15(2) of the Bill, allows an authorised officer to enter premises, without a warrant, if the authorised officer believes on reasonable grounds that a dangerous situation exists.

**Recommendation: the clause be passed**

**19. *Offence to fail to comply with a direction (Cwlth s 22)***

A person who —

- (a) without reasonable excuse, fails to comply with a direction made by an authorized officer in accordance with section 15 or 17;
- (b) without reasonable excuse, obstructs an authorized officer or a person assisting an authorized officer in the exercise of a power of the authorized officer; or
- (c) gives to an authorized officer who is exercising such a power information that the person knows to be false or misleading in a material particular,

is guilty of an offence .

Penalty: For an individual, \$10 000 or imprisonment for 6 months or both.

For a body corporate, \$50 000.

**Comment:** This clause makes it an offence for persons to, without reasonable excuse, fail to comply with a direction of an authorised officer under proposed section 15 and 17 or to obstruct the officer in the exercise of his or her power, or knowingly provide false or misleading information to an authorised officer (maximum penalty for an individual is \$10, 000 or 6 months imprisonment or both, and \$50, 000 for a body corporate)

**Recommendation: the clause be passed**

**20. Self incrimination no excuse (Cwlth s 23)**

A person is not excused from answering a question asked under section 15 on the ground that the answer to the question might tend to incriminate the person, but except for a corporation -

- (a) the answer to the question; or
- (b) any information, document or thing obtained as a direct or indirect consequence of the answer to the question,

is not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against section 19.

**Comment:** This clause provides that a person is not excused from answering a question under proposed section 15 on the grounds that the answer might tend to incriminate the person. However, the answer to the question and any information, documents or things obtained as a direct or indirect consequence of the answer to the questions are generally not admissible in evidence against an individual but may be admissible against a body corporate.

The Committee has noted the specific exclusion of corporations from the privilege against self-incrimination. In this regard, the Committee had some concerns that both individuals and body corporates should be able to provide answers in accordance with section 15 of the Bill without fear of criminal prosecution. Nevertheless, the Committee understands that the High Court decision in *Environmental Protection Authority v Caltex Refining Co Pty Ltd (1993) 178 CLR 477* established the privilege as inapplicable to corporate entities. In that case, Brennan J stated that :

"The rationale for the privilege against self-incrimination has no application to corporations. In practice, if investigative powers were qualified by a privilege against self incrimination enuring for the protection of corporations, the liability of corporations to criminal sanctions would be frequently unenforceable"

In the light of the above, the Committee is satisfied that, as a matter of public policy, corporations should not be afforded the statutory privilege against self-incrimination. It has, however, been noted that the specific exclusion of corporations by this clause is inconsistent with a number of other uniform legislation Bills reviewed by the Committee. The Committee has brought this inconsistency to the attention of Parliamentary Counsel's Office.

**Recommendation: the clause be passed**

**21. Obtaining a warrant (Cwlth s 24)**

- (1) If an authorized officer believes on reasonable grounds that there is, or there will be in the next 72 hours, evidence of an offence at a

residence, at unattended premises or at an unattended vehicle or equipment, the authorized officer may apply to a magistrate for a warrant authorizing him or her to enter the premises, vehicle or equipment and seize the evidence.

- (2) The application must be made by information on oath, and must include-
  - (a) the purpose for which the warrant is to be issued and the nature of the offence the authorized officer suspects has been or is likely to be committed;
  - (b) a description of the residence, premises, vehicle or equipment;
  - (c) the type of evidence to be searched for and seized;
  - (d) whether consent to enter the residence, premises, vehicle or equipment has been sought, and whether —
    - (i) consent has been refused or withdrawn; or
    - (ii) consent has been unable to be obtained after reasonable efforts have been made to obtain it;
  - (e) if the officer assumes that consent will not be given if it is sought — the grounds on which that assumption was made;
  - (f) whether the powers authorized by the warrant will need to be exercised at any time of the day or night or between specified hours; and
  - (h) the period for which the authorized officer believes the warrant needs to remain in force.
- (3) The magistrate must not issue a warrant unless he or she is satisfied that there are reasonable grounds for doing so.
- (4) If the magistrate decides to issue a warrant, the magistrate must state in the warrant —
  - (a) the name of the authorized officer to whom it is directed;
  - (b) the purpose for which the warrant is issued and the nature of the offence the authorized officer suspects has been, is being or will be committed;
  - (c) a description of the residence, premises, vehicle or equipment;
  - (d) the type of evidence to be searched for and seized;

- (e) whether the powers authorized by the warrant may be exercised at any time of the day or night or between specified hours; and
- (f) the period for which the warrant is to remain in force (not exceeding 7 days).

**Comment:** This clause enables an authorised officer to apply for a warrant to search residences, unattended premises, vehicles and equipment and to seize evidence and sets out the conditions for obtaining, and limitations, on any such warrant.

**Recommendation: the clause be passed**

#### **24. Search and seizure etc. of other evidence (Cwlth s 27)**

If, in the course of searching under this Act, an authorized officer finds things (other than things specified in a warrant under this Act) that the authorized officer believes on reasonable grounds —

- (a) would constitute evidence of an offence; and
- (b) would be concealed, lost or destroyed, or used in committing an offence, if the officer did not seize them,

the authorized officer may —

- (c) seize the things; or
- (d) do whatever is necessary to preserve the evidence, including placing a seal, lock or guard.

**Comment:** This clause enables an authorised officer to seize or preserve evidence of other offences (not specified in the warrant) which may be discovered during the course of a search under the Bill. Clause 3 of the Bill provides that an "offence" means an offence against this Act.

**Recommendation: the clause be passed**

#### **25. Notice to remedy contravention (Cwlth s 28)**

- (1) If an authorized officer believes on reasonable grounds that a person —
  - (a) is contravening this Act; or

- (b) has contravened this Act in circumstances that make it likely that the contravention will be repeated,

the authorized officer may give the person a notice requiring the person to remedy the matters causing the contravention.

- (2) A notice under this section must —
  - (a) be in writing;
  - (b) state the name of the person to whom it is directed;
  - (c) state that the authorized officer believes that the person to whom the notice is directed —
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision of this Act in circumstances that make it likely that the contravention will be repeated;
  - (d) state the grounds on which the belief is based;
  - (e) specify the provision of this Act; and
  - (f) specify a day by which the matters referred to in the notice must be remedied.
- (3) An authorized officer may include in a notice under this section directions as to the measures to be taken to remedy the contravention, or to avoid further contravention of, this Act.
- (4) A notice under this section that relates to a vehicle may be given by placing it securely on the vehicle in a conspicuous position.
- (5) A person who —
  - (a) contravenes a notice under this section; or
  - (b) removes a notice under this section from a vehicle before the matters causing the contravention have been remedied (unless it is necessary to do so to remedy the matters),

is guilty of an offence.

Penalty: For an individual, \$10 000.  
For a body corporate, \$50 000.

**Comment:** This clause provides the authority for an inspector to issue an improvement notice to achieve compliance with the law. The decision can be reviewed by the Local Court under clause 27.

**Recommendation:** the clause be passed

**26. Notice to eliminate or minimize danger (Cwlth s 29)**

- (1) If an authorized officer believes on reasonable grounds that —
- (a) a dangerous situation exists; and
  - (b) a person is in a position to take measures to avert, eliminate or minimize the danger,
- the authorized officer may issue a notice requiring the person to take those measures.
- (2) A notice under this section must —
- (a) be in writing;
  - (b) state the name of the person to whom it is directed;
  - (c) identify the situation that, in the authorized officer's opinion, is causing the danger;
  - (d) state the grounds on which the belief is based;
  - (e) specify the measures to be taken; and
  - (f) specify a day by which the measures are to be taken.
- (3) A notice under this section that relates to a vehicle may be given by placing it securely on the vehicle in a conspicuous position.
- (4) A person who —
- (a) contravenes a notice under this section; or
  - (b) removes a notice under this section from a vehicle before measures have been taken to avert, eliminate or minimize the danger (unless it is necessary to do so to avert, eliminate or minimize the danger),

is guilty of an offence.

Penalty: For an individual, \$10 000.

For a body corporate, \$50 000.

**Comment:** This clause allows an authorised officer to issue a notice against a person when the officer believes a dangerous situation exists and that person is in a position to take measures to avert, eliminate or minimise the danger. The decision can be reviewed by the Local Court under clause 27.

**Recommendation: the clause be passed**

**35. Duties concerning the transport of dangerous goods (Cwlth s 37)**

- (1) A person involved in the transport of dangerous goods who fails to ensure, as far as is practicable, that the goods are transported in a safe manner is guilty of an offence.
- (2) If a person involved in the transport of dangerous goods fails to comply with a provision of this Act in circumstances where the person knew, or ought reasonably to have known, that the failure would be likely to endanger the safety of another person or of property or the environment, the person is guilty of an offence.

Penalty:

- (a) if the failure results in death or serious injury to a person-
  - (i) for an individual, \$100 000 or imprisonment for 4 years or both;
  - (ii) for a body corporate, \$500 000;
- (b) in any other case —
  - (i) for an individual, \$50 000 or imprisonment for 2 years or both;
  - (ii) for a body corporate, \$250 000.

**Comment:** This clause is essentially a Duty of Care provision. The clause makes it an offence to fail to ensure, as far as practicable, that dangerous goods are transported in a safe manner. It is also an offence to fail to comply with a provision of the proposed Act where the person knows or reasonably ought to know that the failure would be likely to endanger the safety of another person or of property or the environment.

The maximum penalty if the failure results in death or serious injury is \$100 000 or imprisonment for 4 years, or both, for an individual or \$500 000 for a body corporate. In any other case the maximum penalty is \$50 000 or imprisonment for 2 years, or both, for an individual or \$250 000 for a body corporate.

**Recommendation: the clause be passed**

**39. Use of codes of practice etc. in proceedings (Cwlth s 41)**

- (1) This section applies to a code of practice, guideline or other document that is approved by the Minister for the purpose of providing practical guidance to people engaged in the transport of dangerous goods.
- (2) If —

- (a) in proceedings against a person for an offence, it is alleged that a person contravened a provision of this Act;
- (b) a code of practice, guideline or other document to which this section applies specifies a means of complying with the provision or with a requirement of the provision; and
- (c) either —
  - (i) the code of practice, guideline or other document has been published in the *Gazette*; or
  - (ii) copies of the code of practice, guideline or other document are available for purchase or inspection within the State,

then —

- (d) the code of practice, guideline or other document is admissible in the proceedings; and
- (e) if the court is satisfied that, at the relevant time, the person acted in accordance with the code of practice, guideline or other document, the person is taken to have complied with the provision or requirement.

**Comment:** This clause allows the admissibility of codes of practice, guidelines or other documents approved by the Minister in proceedings against a person for an alleged offence against a provision of the proposed Act. Essentially such codes of practice and guidelines will be used to interpret the meaning of the words "as far as is practicable" in the Duty of Care clause (35).

**Recommendation:** the clause be passed



**6 Selected clauses from the *Dangerous Goods (Transport) Consequential Provisions) Bill 1998***

**3. Principal Act**

In this Act the *Explosives and Dangerous Goods Act 1961*\* is referred to as the principal Act.

**Comment:** This clause defines the *Explosives and Dangerous Goods Act 1961* as the Principal Act.

**Recommendation: the clause be passed**

**5. Section 6 amended**

(1) After section 6 (1) of the principal Act the following subsection is inserted

“

(1a) Notwithstanding subsection (1), if a provision of this Act —

- (a) that relates to the storage and handling of explosives or dangerous goods; and
- (b) that does not relate to the transport of explosives or dangerous goods,

is inconsistent with a provision of the *Dangerous Goods (Transport) Act 1998*, the provision of this Act prevails.

”.

(2) Section 6 (2) of the principal Act is amended by inserting after “subsection (1)” the following —

“ and (1a) ”.

**Comment:** This clause harmonizes the relationship between the Principal Act and the *Dangerous Goods (Transport) Act*. The clause specifically provides that the Principal Act prevails in the event of inconsistency with certain provisions of the *Dangerous Goods (Transport) Act 1998*.

**Recommendation: the clause be passed**

**6. Section 7 amended**

- (1) Section 7 (1) of the principal Act is amended in the definition of “blasting agent” by deleting “classified as an explosive” in the 2 places where it occurs and in each case substituting the following —

“ an authorized explosive ”.

- (2) Section 7 (1) of the principal Act is amended by deleting the definition of “dangerous goods” and substituting the following definition —

“**dangerous goods**” means a substance or article that is prescribed to be dangerous goods; ”.

- (3) Section 7 (1) of the principal Act is amended by deleting the definition of “explosive” and substituting the following definition —

“**explosive**” means a substance or article that is prescribed to be an explosive;

”.

- (4) Section 7 (1) of the principal Act is amended by deleting the definition of “flash point”.

**Comment:** This clause makes amendments to the definitions of "blasting agent", "dangerous goods" and "explosives" in order to adopt current nationally and internationally accepted definitions of dangerous goods and explosives. The clause also maintains consistency with proposed national regulations under the *Dangerous Goods (Transport) Act 1998*.

**Recommendation: the clause be passed**

**18. Section 54 amended**

Section 54 of the principal Act is amended —

- (a) by deleting “or vehicle, vessel or aircraft”; and  
 (b) in paragraph (c) by deleting “, vehicle, vessel or aircraft”.

**Comment:** This clause amends section 54 of the Principal Act by deleting all references to vehicle, vessel or aircraft. Transport by vehicle, vessel or aircraft are covered by the *Dangerous Goods (Transport) Act 1998*.

**Recommendation: the clause be passed**

**Hon Murray Nixon MLC**

**Chairman**

**Date:**