

# **Model Subordinate Instrument on the Transport of Dangerous Goods by Road or Rail**

as at 22 June 2022

As approved by the Transport and Infrastructure Council

Published by the Parliamentary Counsel's Committee

This is a consolidated version of the *Model Subordinate Instrument on the Transport of Dangerous Goods by Road or Rail*. This Instrument is a national model law and is intended to provide the basis for nationally consistent transport laws. This Instrument does not, by itself, have any legal effect.

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## **Part 1      General, interpretation, training and                  offence provisions**

### **Division 1.1      Introductory and application**

#### **1.1.1 Name of subordinate instrument**

This subordinate instrument is the *Model Subordinate Instrument on the Transport of Dangerous Goods by Road or Rail*.

#### **1.1.2 Commencement**

This subordinate instrument was approved by the Transport and Infrastructure Council on 4 November 2016.

#### **1.1.3 Main objects**

The main objects of this subordinate instrument are:

- (a) to set out the obligations of persons involved in the transport of dangerous goods by land transport; and
- (b) to reduce as far as practicable the risks of personal injury, death, property damage and environmental harm arising from the transport of dangerous goods by land transport; and
- (c) to give effect to the standards, requirements and procedures of the ADG Code so far as they apply to the transport of dangerous goods by land transport; and
- (d) to promote consistency between the standards, requirements and procedures applying to the transport of dangerous goods by land transport and other modes of transport.

#### **1.1.4 Dangerous situations**

This subordinate instrument does not apply to the transport of dangerous goods by, or at the direction of, an authorised officer or an officer of an emergency service, to the extent necessary to avert, eliminate or minimise a dangerous situation.

#### **1.1.5 Exempt transport**

- (1) In this clause:

*designated dangerous goods* means dangerous goods of:

- (a) UN Class 1 (explosives), except:
  - (i) dangerous goods of UN Division 1.4S; and
  - (ii) track signals carried in a unit of rolling stock for the safety of persons working in rail transport; or
- (b) Category A of UN Division 6.2 (infectious substances); or
- (c) UN Class 7 (radioactive material).

#### 1.1.6 Further exemptions

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- (2) This subordinate instrument does not apply to the transport by a person of a load that contains dangerous goods if:
  - (a) the load does not contain:
    - (i) dangerous goods in a receptacle with a capacity of more than 500 litres; or
    - (ii) more than 500 kilograms of dangerous goods in a receptacle; and
  - (b) the goods are not, and do not include, designated dangerous goods; and
  - (c) the aggregate quantity of the dangerous goods in the load is less than 25% of a placard load; and
  - (d) the goods are not being transported by the person in the course of a business of transporting goods by road; and
  - (e) in relation to transport by rail — the goods are not being transported by the person on a passenger train.

#### 1.1.6 Further exemptions

- (1) This subordinate instrument does not apply to the transport by road or rail or both rail and road of dangerous goods of UN Class 1 (explosives) or UN Class 7 (radioactive material) except when being transported with other dangerous goods.
- (2) This subordinate instrument does not apply to the transport by a vehicle by road or rail or both rail and road of dangerous goods:
  - (a) that are not UN Division 6.2 infectious substances and that are in a consignment where the aggregate quantity of dangerous goods is not more than the quantity set out in subclause (3)(a) of the note to section 1.1.1.2 of the ADG Code; or
  - (b) in the vehicle's fuel tank; or
  - (c) in an appliance or plant that forms part of the vehicle and that is necessary for its operation; or
  - (d) that are portable fire fighting equipment or other portable safety equipment and that are part of the safety equipment of the vehicle.
- (3) This subordinate instrument does not apply to the transport of dangerous goods by a mobile processing unit for the purpose of manufacturing explosives.
- (4) In subclause (3):  
***mobile processing unit*** means a vehicle, or a moveable piece of equipment, designed to transport the constituents of a bulk ammonium nitrate-based explosive to the place where the explosive will be manufactured and used, but does not include a trailer.

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

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**1.1.7 Special provisions for tools of trade and dangerous goods for private use**

- (1) This clause applies to a load if the following conditions are met:
  - (a) for loads not including dangerous goods of UN Division 2.1 (other than aerosols), UN Division 2.3 or Packing Group I — the load includes an aggregate quantity of dangerous goods of less than 500;
  - (b) for loads including dangerous goods of UN Division 2.1 (other than aerosols), UN Division 2.3 or Packing Group I:
    - (i) the load includes an aggregate quantity of dangerous goods of less than 250; and
    - (ii) any dangerous goods of UN Division 2.3 or Packing Group I together constitute less than 100 of that aggregate quantity;
  - (c) the goods are not being transported in the course of a business of transporting goods but are being transported:
    - (i) by a person who intends to use them; or
    - (ii) so that they can be used for a commercial purpose.
- (2) A person transporting a load to which this clause applies is exempt from all obligations imposed by this subordinate instrument other than those imposed by this clause.
- (3) A person must not transport a load to which this clause applies unless each package in the load:
  - (a) complies with the packaging requirements appropriate to the quantity of dangerous goods, as specified in Part 4; and
  - (b) is labelled and marked as specified in Division 5.1; and
  - (c) is loaded, secured, segregated, unloaded and otherwise transported in such a way as to ensure that:
    - (i) its packaging remains fit for its purpose; and
    - (ii) the risks to any person, property or the environment are eliminated, or if it is not practicable to eliminate the risks, are minimised to the maximum extent that is practicable.

Offence provision.

- (4) If a load to which this clause applies contains an aggregate quantity of dangerous goods of UN Class 3, 4, 5 or 6 of more than 250, a person must not transport the load:

### 1.2.1 Definitions

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- (a) in the passenger compartment of a vehicle; or
- (b) in an enclosed space that is not separated from the passenger compartment of a vehicle.

Offence provision.

- (5) If a load to which this clause applies contains an aggregate quantity of dangerous goods of UN Division 2.1, UN Division 2.3 or Packing Group I of more than 50, a person must not transport the load:

- (a) in the passenger compartment of a vehicle; or
- (b) in any other enclosed space in the vehicle unless the space is sufficiently ventilated to prevent an accumulation of vapours or fumes that is likely to cause risk.

Offence provision.

## Division 1.2 Interpretation

### 1.2.1 Definitions

*Note* Definitions preceded by an \* are taken from the Act.

In this subordinate instrument, unless the contrary intention appears:

**Act** means the *Model Act on the Transport of Dangerous Goods by Road or Rail*.

**ADG Code** means the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, approved by the Ministerial Council, as in force or remade from time to time. If that document is amended or remade, a reference in this subordinate instrument to a provision of that document extends to the corresponding provision (if any) of the amended or remade document.

**administrative determination** — see clause 1.5.4.

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

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

- (a) the number of kilograms of:
  - (i) solid dangerous goods; and
  - (ii) articles, including aerosols;in the load; and
- (b) the number of litres or kilograms, being whichever is used in the transport documentation for the load to describe the goods, of liquid dangerous goods in the load; and

1.2.1 Definitions

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- (c) the total capacity in litres of receptacles in the load containing dangerous goods of UN Class 2 (except aerosols).

***appropriately marked*** — see clause 5.1.1.

***approval*** means an approval by the Competent Authority or an authorised body under this subordinate instrument, and that is in effect.

***approved packaging*** means:

- (a) packaging of a design that is approved under clause 4.2.4; or
- (b) foreign approved packaging.

***approved tank*** means:

- (a) a tank of a design that is approved under clause 4.2.4; or
- (b) a foreign approved tank.

***approved test*** means a test that is approved under clause 1.3.2(1)(a).

***approved training course*** means a training course that is approved under clause 1.3.2(1)(b).

***article*** means a manufactured item, other than a fluid or particle, that:

- (a) is formed into a particular shape or design during manufacture; and
- (b) has hazard properties and a function that are wholly or partly dependent on that shape or design;

and includes batteries, aerosols, gas-filled lighters, seat belt pre-tensioners and refrigerating machines.

***\*Australian Road Rules*** means the document entitled the *Australian Road Rules* as approved by the Transport and Infrastructure Council from time to time.

***authorised body*** means a person or body authorised to issue approvals under clause 4.2.8.

***\*authorised officer*** means an authorised officer appointed under section 24 of the Act.

***bulk container*** — see clause 1.2.6.

***CAP*** or ***Competent Authorities Panel*** means the body established by the *Competent Authorities Panel Rules* made by the National Transport Commission on 13 June 2008, as amended from time to time.

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

***cargo transport unit*** means:

- (a) a road transport tank or freight vehicle; or
- (b) a railway transport tank or freight wagon; or
- (c) a portable tank; or
- (d) a bulk container; or
- (e) a freight container; or

1.2.1 Definitions

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(f) a MEGC.

**Category**, for dangerous goods — see clause 2.1.3.

**\*Competent Authority** means the relevant Competent Authority appointed under section 23 of the Act.

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

**consign** and **consignor** — see section 6 of the Act.

**corresponding approval** means an approval to which clause 15.3.3 applies.

**corresponding authority** means a Competent Authority of a participating jurisdiction.

**corresponding dangerous goods driver licence** means a licence to which clause 15.3.4 applies that has effect in this jurisdiction under that clause as a dangerous goods driver licence.

**corresponding dangerous goods vehicle licence** means a licence to which clause 15.3.4 applies that has effect in this jurisdiction under that clause as a dangerous goods vehicle licence.

**corresponding determination** means a determination to which clause 15.3.1 applies.

**corresponding exemption** means an exemption to which clause 15.3.2 applies.

**dangerous goods** — see clause 2.1.1.

**dangerous goods driver licence** means a licence that is in force under Division 18.3.

**Dangerous Goods List** means the list set out in section 3.2.3 of the ADG Code.

**dangerous goods vehicle licence** means a licence that is in force under Division 18.4.

**\*dangerous situation** means a situation that is causing or is likely to cause imminent risk of serious injury to a person, significant harm to the environment or significant damage to property.

**demountable tank** means a tank, other than a portable tank, that is designed to be carried on a vehicle but that does not form part of and is not permanently attached to the vehicle and is designed to be removable.

**determination** means a determination that is made by the Competent Authority under Division 1.5, and that is in effect.

**driver licence** means a licence (other than a provisional or learner licence) issued under a State or Territory law authorising the licensee to drive a road vehicle.

**driving licences register** of a State or Territory means a register kept by the driver licensing authority of the State or Territory containing

1.2.1 Definitions

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information about any licence authorising the licensee to drive a road vehicle.

**emergency service** means:

- (a) an ambulance, fire, police or other emergency service of a participating jurisdiction; or
- (b) a unit of the Defence Force corresponding to a service mentioned in paragraph (a).

**exemption** means an exemption in force under section 77 of the Act.

**food** includes:

- (a) a substance prepared or intended for human or animal consumption; and
- (b) a substance (except dangerous goods) intended to be an ingredient of food.

**food packaging** means:

- (a) a receptacle that contains, or is designed or intended to contain, food; or
- (b) material designed or intended to be used in a receptacle that is designed or intended to contain food; or
- (c) plastic wrapping intended for the packaging of food.

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

*Note* Types of foreign approved packaging include, but are not limited to bulk containers, IBCs, large packagings, MEGCs, portable tanks, pressure drums and tubes that are ADR, ICAO, IMO, RID or UN approved.

**freight container** means a container that:

- (a) is of a permanent character suitable for repeated use; and
- (b) is designed to facilitate the transport of goods by one or more modes of transport, without the need for the goods to be unloaded and reloaded when the container is transferred from one mode to another; and
- (c) is fitted with devices that permit the ready stowage and handling of the container, particularly in relation to the transfer of the container from one mode of transport to another; and
- (d) is designed in a way that facilitates the ease of loading and unloading of goods from the container; and
- (e) for a container used to transport goods other than radioactive material — has an internal volume of not less than 1 m<sup>3</sup>.

**hose assembly** means a hose, or hoses connected together, for use in the transfer of dangerous goods to or from a tank on a vehicle, portable tank or storage receptacle and includes:

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

1.2.1 Definitions

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- (c) anything else (except the vehicle, portable tank or storage receptacle) attached to the hose or hoses.

**IBC or intermediate bulk container** — see clause 1.2.7.

**ICAO approved** means approved in accordance with the ICAO Technical Instructions.

**ICAO Technical Instructions** means the Technical Instructions for the Safe Transport of Dangerous Goods by Air published by the International Civil Aviation Organisation.

**IMDG Code** means the International Maritime Dangerous Goods Code published by the International Maritime Organisation.

**IMO approved** means approved in accordance with the IMDG Code.

**incompatible** — see clause 2.1.6.

**inner packaging** has the meaning given in section 1.2.1 of the ADG Code.

**intermediate packaging** has the meaning given in section 1.2.1 of the ADG Code.

**\*involvement in the transport of dangerous goods** includes:

- (a) importing, or arranging for the importation of, dangerous goods into Australia; and
- (b) packing dangerous goods for transport; and
- (c) marking or labelling packages containing dangerous goods for transport, and placarding vehicles and packaging on or in which dangerous goods are transported; and
- (d) consigning dangerous goods for transport, including the preparation of transport documentation; and
- (e) loading dangerous goods for transport or unloading dangerous goods that have been transported; and
- (f) undertaking, or being responsible for, otherwise than as an employee or sub-contractor, the transport of dangerous goods; and
- (g) driving a vehicle carrying dangerous goods; and
- (h) being the consignee of dangerous goods that are transported; and
- (i) 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.

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

**\*jurisdiction** means the Commonwealth or a State or Territory.

**large packaging** means packaging that:

- (a) consists of outer packaging that contains articles or inner packagings; and
- (b) is designed for mechanical handling; and
- (c) has:

### 1.2.1 Definitions

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- (i) a net mass of more than 400 kg or a capacity of more than 450 litres; and
- (ii) a volume of not more than 3 m<sup>3</sup>.

**licensed vehicle** means a vehicle for which a dangerous goods vehicle licence is in force.

**load** (noun) — see clause 1.2.12.

**load** and **loader** — see section 8 of the Act.

**MEGC** or **multiple-element gas container** — see clause 1.2.8.

**Ministerial Council** means the body (however described) that consists of the Minister of the Commonwealth, and the Minister of each State and Territory, who is responsible, or principally responsible, for matters relating to infrastructure and transport.

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

**NATA** means the National Association of Testing Authorities.

**\*offence** means an offence against the Act or this subordinate instrument.

**outer packaging** has the meaning given in section 1.2.1 of the ADG Code.

**overpack** means an enclosure, other than large packaging, used to contain one or more packages in a way that forms one unit for convenience of stowage and handling during transport.

#### *Examples*

- packages placed or stacked on a pallet and secured by strapping, shrink wrapping, stretch wrapping or another suitable way
- packages placed in protective outer packaging such as in a box or crate

**owner**, of a vehicle, — see section 4(1) of the Act.

**package** — see section 4(1) of the Act.

**packaging** includes:

- (a) inner packaging, intermediate packaging, outer packaging, an overpack, large packaging, an IBC, an MEGC, a tank (including the tank of a tank vehicle), a bulk container or freight container, a drum barrel, a jerry can, a box and a bag; and
- (b) any other components or materials used for containing the contents of the packaging or performing another safety function in relation to the transport of the packaging and its contents.

**packed in limited quantities** — see clause 1.2.9.

**Packing Group** — see clause 2.1.5.

**pack** and **packer** — see section 7 of the Act.

**participating jurisdiction** means:

- (a) this jurisdiction; and

### 1.2.1 Definitions

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- (b) any other State or Territory that has a corresponding law within the meaning of the Act.

**placard load** means a load that contains dangerous goods that must be placarded under clause 5.2.1.

**placards** — see clause 5.2.2(1).

**portable tank** means a tank used for the transport of a solid, liquid or gas that:

- (a) includes a shell fitted with service equipment and structural equipment necessary for the transport of the solid, liquid or gas; and
- (b) is capable of being loaded and unloaded without removing its structural equipment; and
- (c) has stabilising components external to its shell, and is capable of being lifted when full; and
- (d) is designed primarily to be loaded on to a vehicle or vessel and is equipped with skids, mountings or accessories to facilitate mechanical handling; and
- (e) for a tank used for transporting a substance of UN Class 1 and UN Class 3 to 9 — is a multimodal tank; and
- (f) for a tank used for transporting non-refrigerated, liquefied gases of UN Class 2 — is a multimodal tank having a capacity of more than 450 litres; and
- (g) for a tank used for transporting refrigerated, liquefied gases of UN Class 2 — is a thermally insulated tank having a capacity of more than 450 litres; and
- (h) is not an item that is not considered to be a portable tank for the purposes of the ADG Code.

*Note*

See the definition of portable tank in section 1.2.1 of the ADG Code for the list of items that are not considered to be a portable tank for the purposes of the ADG Code.

**\*premises** includes a structure, whether permanent or temporary, and land, but does not include a vehicle.

**pressure drum** means a welded transportable pressure receptacle of a water capacity exceeding 150 litres and of not more than 1 000 litres (eg a cylindrical receptacle equipped with rolling hoops, spheres on skids).

**prime contractor** — see section 4(1) of the Act.

**prime mover** means a road vehicle that is designed to tow a trailer but does not include a vehicle that has a load carrying capacity in addition to a trailer.

**provisional licence** means a provisional or probationary licence (but not a learner licence) issued under a State or Territory law authorising a person who is a novice driver to drive a road vehicle.

## 1.2.1 Definitions

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**rail authority**, in respect of a train on a railway, means the person or body (whether or not a public authority) that is responsible for the care, control or management of the railway.

**\*rail operator** — see section 4(1) of the Act.

**rail tank wagon** means a rail wagon of which a tank forms an integral part.

**rail wagon** means a unit of rolling stock that:

- (a) is designed to carry freight by rail; and
- (b) bears a unique identifying number or alphanumeric identifier.

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

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

**register** — see clause 15.1.1.

**registered** means registered under a Commonwealth, State or Territory law.

**RID approved** means approved in accordance with the *International Regulations Concerning the Carriage of Dangerous Goods by Rail* published by the Inland Transport Committee of the United Nations Economic Commission for Europe.

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

**\*road** and **road-related area** — see clause 1.2.10.

**road tank vehicle** means a road vehicle of which a tank forms part or to which a tank, other than a portable tank, is attached.

**service equipment**, in relation to a tank or MEGC, has the meaning given in section 6.7.2.1, 6.7.3.1, 6.7.4.1 or 6.7.5.1, as the case requires, of the ADG Code.

**structural equipment**, in relation to a tank or MEGC, has the meaning given in section 6.7.2.1, 6.7.3.1, 6.7.4.1 or 6.7.5.1, as the case requires, of the ADG Code.

**subsidiary hazard** — see clause 2.1.4.

**tank** see clause 1.2.11.

**tank vehicle** means a road vehicle or unit of rolling stock:

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

**\*trailer** means a road vehicle that is designed to be towed, or is towed, by another road vehicle but does not include a road vehicle propelled by a motor that forms part of the vehicle.

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

### 1.2.2 References to codes, standards and rules

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*Note* Rail wagon, rail tank wagon, locomotive, guard's van, crew or passenger carriage and track maintenance vehicle are examples of units of rolling stock.

**\*transport**, in relation to dangerous goods, 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; and
- (b) the marking of packages containing dangerous goods, and the placarding of cargo transport units in or on which dangerous goods are transported; and
- (c) other matters incidental to their transport.

**transport documentation** means documentation that complies with Chapter 11.1 of the ADG Code.

**tube** means a pressure receptacle of seamless or composite construction having a water capacity exceeding 150 litres but not more than 3 000 litres.

**UN approved** means approved in accordance with the Model Regulations on the Transport of Dangerous Goods annexed to the *Recommendations on the Transport of Dangerous Goods* published by the United Nations.

**UN Class**, for dangerous goods, means the class to which dangerous goods belong in accordance with clause 2.1.3.

**UN Division**, for dangerous goods, means the division to which dangerous goods of a particular UN Class belong in accordance with clause 2.1.3.

**\*unit of rolling stock** means a vehicle designed to run on rails.

**\*vehicle** means:

- (a) a road vehicle, including a combination; or
- (b) a unit of rolling stock.

*Note* Rail wagon, rail tank wagon, locomotive, guard's van, crew or passenger carriage and track maintenance vehicle are examples of units of rolling stock.

### 1.2.2 References to codes, standards and rules

- (1) In this clause:

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

- (2) In this subordinate instrument, a reference to an instrument includes a reference to another instrument as applied or adopted by, or incorporated in, the first instrument.
- (3) In this subordinate instrument, unless the contrary intention appears, a reference to an instrument is a reference to the instrument as amended from time to time.

1.2.3 Inconsistency between this subordinate instrument and codes etc

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### 1.2.3 Inconsistency between this subordinate instrument and codes etc

- (1) If all or part of a code, standard or rule (whether made in or outside Australia) relating to dangerous goods or to transport by road or rail is applied or adopted by, or is incorporated in, this subordinate instrument and the code, standard or rule is inconsistent with this subordinate instrument, this subordinate instrument prevails to the extent of the inconsistency.
- (2) Despite subclause (1), if any provision that is applied, adopted by or incorporated in this subordinate instrument uses a term that is defined in both the relevant code, standard or rule, and in this subordinate instrument, the provision is to be interpreted as if the term had the meaning set out in the code, standard or rule, unless the contrary intention appears.

### 1.2.4 References to determinations, exemptions, approvals and licences

In this subordinate instrument, a reference to:

- (a) a determination, exemption, approval, dangerous goods driver licence or dangerous goods vehicle licence; or
- (b) a corresponding determination, exemption, approval, dangerous goods driver licence or dangerous goods vehicle licence;

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

### 1.2.5 References to variation of determinations etc

In this subordinate instrument, a reference to the variation of:

- (a) a determination, exemption, approval, dangerous goods driver licence or dangerous goods vehicle licence; or
- (b) a corresponding determination, exemption, approval, dangerous goods driver licence or dangerous goods vehicle licence;

includes a reference to a variation by addition, omission or substitution.

*Example* The addition of a new condition to an existing administrative determination.

### 1.2.6 Meaning of *bulk container*

- (1) A **bulk container** is a system for containing solid substances, including any liner or coating that:
  - (a) is designed for transporting solid substances which are in direct contact with the system; and
  - (b) is of a permanent character suitable for repeated use; and
  - (c) is designed to facilitate the transport of solid substances by one or more modes of transport, without the need for the substances to be

### 1.2.7 Meaning of IBC

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unloaded and reloaded when transferred from one mode to another; and

- (d) is fitted with devices that permit ready handling; and
- (e) has a capacity of not less than 1 m<sup>3</sup>.

#### *Examples*

Freight containers, offshore bulk containers, skips, bulk bins, swap bodies, trough-shaped containers, roller containers, load compartments of vehicles and flexible containers are bulk containers.

- (2) However, an IBC, large packaging or a portable tank is not a ***bulk container***.

### 1.2.7 Meaning of IBC

- (1) Subject to subclause (2), ***IBC*** or ***intermediate bulk container*** means a rigid or flexible portable packaging for the transport of dangerous goods that complies with the specifications in Chapter 6.5 of the ADG Code and that:
  - (a) has a capacity of not more than:
    - (i) for solids of Packing Group I packed in a composite, fibreboard, flexible, wooden, or rigid plastics container — 1 500 litres; and
    - (ii) for solids of Packing Group I packed in a metal container — 3 000 litres; and
    - (iii) for solids or liquids of Packing Groups II and III — 3 000 litres; and
    - (iv) for any other dangerous goods — 3 000 litres; and
  - (b) is designed for mechanical handling.
- (2) Rigid or flexible portable packaging that complies with the requirements of Chapter 6.1, 6.3 or 6.6 of the ADG Code cannot be an IBC.

### 1.2.8 Meaning of MEGC

***MEGC*** or ***multiple-element gas container*** means:

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

### 1.2.9 Dangerous goods *packed in limited quantities*

Dangerous goods are ***packed in limited quantities*** if:

- (a) the goods are packed in accordance with Chapter 3.4 of the ADG Code; and

#### 1.2.10 Road and road-related area

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- (b) the quantity of dangerous goods in each inner packaging or in each article does not exceed the quantity specified, or referred to, in column 7a of the Dangerous Goods List for those goods.

#### 1.2.10 Road and road-related area

- (1) Each reference in this subordinate instrument to a **road** includes a reference to a **road-related area**.
- (2) **Road** and **road-related area** have the same meanings as they have in the Australian Road Rules.

[*Drafting note:* Jurisdictions may modify these definitions to the extent that they are inconsistent with their requirements for the application of authorised officer powers.]

#### 1.2.11 References to **tank**

- (1) Unless the context otherwise requires, a reference in this subordinate instrument to a **tank** is a reference to a portable tank, a road tank vehicle, a rail tank wagon, or a receptacle used to contain a solid, liquid or gas.
- (2) However, a reference to a tank includes an item mentioned in subclause (1) that is used to transport a gas (as defined in section 2.2.1.1 of the ADG Code) only if it has a capacity of not less than 450 litres.

#### 1.2.12 References to loads

For the purposes of this subordinate instrument:

- (a) all the goods in or on a road vehicle are a single load, even if the vehicle is transporting more than one cargo transport unit; and
- (b) all the goods in a cargo transport unit being transported on a rail vehicle are a single load.

#### 1.2.13 Transitional arrangement if ADG Code or related instrument amended or remade

- (1) In this clause:  
**relevant period**, for an amendment or remake mentioned in subclause (2)(a), means the period starting on the day the amendment or remake takes effect and ending on the day 12 months after that day.  
**requirement** means a duty, obligation, requirement or restriction (however described).
- (2) This clause applies if:
  - (a) the ADG Code is amended or remade or a code, standard or rule applied or adopted by, or incorporated in, the ADG Code is amended or remade; and
  - (b) the amendment or remake has the effect of imposing a new requirement on a person, or modifying an existing requirement applying to a person, under this subordinate instrument.

#### 1.3.1 Instruction and training

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- (3) The new requirement or modified existing requirement does not apply in relation to the person until the relevant period for the amendment or remake ends.
- (4) For subclause (3), this subordinate instrument applies in relation to the person during the relevant period as if the amendment or remake had not taken effect.
- (5) This clause is subject to any other clause of this subordinate instrument that provides for when or how the new requirement or modified existing requirement applies in relation to the person.

### **Division 1.3 Training**

#### **1.3.1 Instruction and training**

- (1) This clause applies to any task involved in the transport of dangerous goods, including the following:
  - (a) packing dangerous goods;
  - (b) consigning dangerous goods;
  - (c) loading dangerous goods;
  - (d) unloading dangerous goods;
  - (e) handling fumigated cargo transport units;
  - (f) marking packages;
  - (g) placarding placard loads;
  - (h) preparing transport documentation;
  - (i) maintaining vehicles and equipment used in the transport of dangerous goods;
  - (j) driving a vehicle transporting dangerous goods;
  - (k) being the consignee of dangerous goods;
  - (l) following the appropriate procedures in accordance with this subordinate instrument in a dangerous situation.
- (2) A person who is responsible for management or control of a task must not employ, engage or permit someone else to perform the task if the other person:
  - (a) has not received, or is not receiving, appropriate instruction and training to ensure that he or she is able to perform the task safely and in accordance with this subordinate instrument; or
  - (b) is not appropriately supervised in performing the task to ensure that he or she is able to perform the task safely and in accordance with this subordinate instrument.

Offence provision.

### 1.3.2 Approvals — tests and training courses for drivers

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- (3) A person must not manage, control or supervise a task unless the person has received instruction and training to enable him or her to manage, control or supervise another person to perform the task safely and in accordance with this subordinate instrument.

Offence provision.

### 1.3.2 Approvals — tests and training courses for drivers

- (1) The Competent Authority may, on application in accordance with clause 17.1.1, approve:
  - (a) a test of competence for drivers of road vehicles transporting dangerous goods; or
  - (b) a training course for drivers of road vehicles transporting dangerous goods.
- (2) The Competent Authority may approve a test of competence or a training course only if the Authority considers that a person who passes the test, or completes the course, will have the skills and knowledge to perform the task to which the test or course relates safely and in accordance with this subordinate instrument.

## Division 1.4 Provisions about offences generally

### 1.4.1 Offence provisions

- (1) If a provision of this subordinate instrument is followed by the phrase ‘Offence provision’, an individual who fails to comply with the provision is guilty of an offence punishable by a penalty not exceeding the amount set out for the offence in the third column of Schedule 1.
- (2) If a body corporate is found guilty of the offence, the maximum fine for the body corporate is 5 times the maximum fine that could be imposed on an individual for the offence.

### 1.4.2 Goods suspected of being dangerous goods

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

- (a) the goods have been classified in accordance with the ADG Code;  
or
- (b) a determination has been made under clause 1.5.1(1)(a) in respect of the goods.

1.5.1 Determinations — dangerous goods and packaging

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Offence provision.

## Division 1.5 Determinations

### 1.5.1 Determinations — dangerous goods and packaging

- (1) The Competent Authority may determine that goods are or are not:
  - (a) dangerous goods; or
  - (b) dangerous goods of a particular UN Class, UN Division or Category; or
  - (c) dangerous goods with a particular subsidiary hazard; or
  - (d) substances of a particular Packing Group; or
  - (e) incompatible with particular dangerous goods.
- (2) The Competent Authority may determine that:
  - (a) particular dangerous goods are or are not too dangerous to be transported; or
  - (b) particular dangerous goods must not be or may be transported in or on the same cargo transport unit or freight container as other goods, whether or not dangerous goods; or (1.18)
  - (c) particular dangerous goods may or may not be transported in any packaging despite any prohibition or authorisation in the Dangerous Goods List.

### 1.5.2 Determinations — vehicles, routes, areas and times

The Competent Authority may determine that particular dangerous goods may be or must or must not be transported:

- (a) using a specified vehicle, or kind of vehicle; or
- (b) on a specified route; or
- (c) in or through a specified area; or
- (d) at a specified time; or
- (e) in quantities in excess of a specified amount; or
- (f) in specified packaging.

### 1.5.3 Administrative determinations

- (1) A determination is an *administrative determination* if the determination:
  - (a) is made on the application of a person; and
  - (b) applies only to the person, or to the person and to other people named in the application.

*Note* Part 17 contains provisions dealing with administrative determinations, including applications for administrative determinations and their cancellation and variation.

- (2) A determination is also an administrative determination if it:
  - (a) is made at the initiative of the Competent Authority; and

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1.5.4 Determinations may be subject to conditions

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- (b) applies to one or more people named in the determination; and
  - (c) does not impose any obligation on any person, other than conditions that apply if action is taken on the basis of the determination.
- (3) A determination made at the initiative of the Competent Authority may be varied at the initiative of the Competent Authority.

#### **1.5.4 Determinations may be subject to conditions**

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

Offence provision.

{(3) An offence against subclause (2) is an offence of strict liability.}

#### **1.5.5 Effect of determinations on contrary obligations under this subordinate instrument**

If this subordinate instrument imposes an obligation on a person, and the person is authorised or permitted to act contrary to that obligation by a determination made under this Division, the obligation is to be read as if it stated that the person could fulfil the obligation by acting in accordance with the determination.

#### **1.5.6 Register of determinations**

- (1) The Competent Authority must:
  - (a) keep a register of determinations; or
  - (b) with other Competent Authorities, keep a central register of determinations.
- (2) The register may have separate divisions for different kinds of determinations.
- (3) The Competent Authority must record in the register:
  - (a) each determination made under this subordinate instrument that is not an administrative determination; and
  - (b) each corresponding determination.
- (4) The Competent Authority must note in the register:
  - (a) the revocation of a determination made under this subordinate instrument; and
  - (b) a decision of CAP reversing a decision that a corresponding determination should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction.

1.5.7 Records of determinations

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### 1.5.7 Records of determinations

The record of a determination in the register must include:

- (a) the provisions of the determination; or
- (b) the following information:
  - (i) the title of the Government Gazette where the determination was notified or published and the date of notification or publication;
  - (ii) the provisions of this subordinate instrument, and of the ADG Code, to which the determination relates;
  - (iii) the dangerous goods, equipment, packaging, vehicle or other thing to which the determination relates.

### 1.5.8 Offence to do any thing prohibited or regulated by a determination

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

Offence provision.

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

## Part 2 Key concepts

### 2.1.1 Dangerous goods

- (1) Goods are *dangerous goods* if:
  - (a) the goods are determined under clause 1.5.1(1)(a) to be dangerous goods; or
  - (b) the goods satisfy the dangerous goods classification criteria set out, or referred to, in Part 2 of the ADG Code.
- (2) However, goods that satisfy the criteria set out, or referred to, in Part 2 of the ADG Code are not dangerous goods if:
  - (a) the goods are determined under clause 1.5.1(1)(a) not to be dangerous goods; or
  - (b) the goods are described as not subject to the ADG Code in a special provision in Chapter 3.3 of the ADG Code that is applied to the goods by column 6 of the Dangerous Goods List, and any condition included in that description is met.

### 2.1.2 Goods too dangerous to be transported

Dangerous goods are too dangerous to be transported if they are:

- (a) goods set out or described in Appendix A to the ADG Code; or
- (b) goods determined under clause 1.5.1(2)(a) to be too dangerous to be transported; or
- (c) goods (other than goods mentioned in paragraph (a) or (b)) that are so sensitive or unstable that they cannot be safely transported even if the relevant requirements of this subordinate instrument and the ADG Code are complied with.

*Note* Section 83 of the Act provides that a person must not consign for transport goods that this subordinate instrument identifies as being too dangerous to be transported.

### 2.1.3 UN Classes, UN Divisions and Categories of dangerous goods

- (1) The UN Class, Division or Category of particular dangerous goods for the purposes of this subordinate instrument is:
  - (a) if a determination under section 1.5.1(1)(b) that the goods are of a particular UN Class, Division or Category is in effect in relation to the goods — the Class, Division or Category specified in the determination; or
  - (b) if no such determination is in effect — the Class, Division or Category determined for the goods in accordance with the ADG Code.

#### 2.1.4 Subsidiary hazard

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*Note 1* Under the UN classification system there are 9 classes of dangerous goods. Under that system some Classes are further divided into Divisions, and some Divisions are divided into Categories.

*Examples*

UN Division 6.2 infectious substances are divided into:

- (a) Category A (substances transported in a form that, if exposure occurs, can cause permanent disability or life-threatening or fatal disease to humans or animals); and
- (b) Category B (others).

*Note 2* Under the ADG Code, if particular dangerous goods are listed in the Dangerous Goods List, their UN Class or Division is that listed in column 2 of that list opposite the name and description of those goods, unless Chapter 3.3 of that Code provides for those goods to be assigned to a different Class or Division. If applicable, Chapter 2 of that Code describes how the UN Category of dangerous goods is to be determined. Once again the Category may be changed under Chapter 3.3 of that Code.

#### 2.1.4 Subsidiary hazard

The subsidiary hazard, if any, of particular dangerous goods for the purposes of this subordinate instrument is:

- (a) if a determination under clause 1.5.1(1)(c) that the goods have a particular subsidiary hazard is in effect — the subsidiary hazard specified in the determination; or
- (b) if no such determination is in effect — the subsidiary hazard determined for the goods in accordance with the ADG Code.

*Note* Dangerous goods that are able to be assigned to more than one UN Class or Division are assigned a subsidiary hazard. This subsidiary hazard is the other UN Class/es or Division/s to which the goods also belong. Under the ADG Code, if particular dangerous goods are listed in the Dangerous Goods List, their subsidiary hazard is that listed in column 4 of that list opposite the name and description of those goods, unless Chapter 3.3 of that Code provides for those goods to be assigned a different subsidiary hazard.

#### 2.1.5 Packing Groups

The Packing Group, if any, of particular dangerous goods for the purposes of this subordinate instrument is:

- (a) if a determination under section 1.5.1(1)(d) that the goods are of a particular Packing Group is in effect — the Packing Group specified in the determination; or
- (b) if no such determination is in effect — the Packing Group determined for the goods in accordance with the ADG Code.

*Note* The assignment of particular dangerous goods to a Packing Group indicates the degree of danger, and the level of containment required for, the goods. The Packing Groups, and the degree of danger they indicate, are:

Packing Group I (substances presenting high danger);

#### 2.1.6 Incompatibility

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Packing Group II (substances presenting medium danger);

Packing Group III (substances presenting low danger).

The Packing Group of a substance can be determined from the Dangerous Goods List, although in some cases it is also necessary to refer to Chapter 3.3 of the ADG Code (the List identifies those cases).

#### 2.1.6 Incompatibility

- (1) Dangerous or other goods are *incompatible* with dangerous goods if:
  - (a) the goods are incompatible under Chapter 9.1 of the ADG Code;  
or
  - (b) the goods are determined under clause 1.5.1(1)(e) to be incompatible with the dangerous goods; or
  - (c) when the goods are mixed, or otherwise brought into contact, with the dangerous goods, the goods are likely to interact with the dangerous goods and increase risk because of the interaction.
- (2) Packaging or equipment for use in the transport of dangerous goods is *incompatible* with the goods if any component of the packaging or equipment that is intended or likely to come into contact with the goods during transport:
  - (a) is likely to interact with the goods and increase risk because of the interaction; and
  - (b) is not protected from contact under foreseeable circumstances by a protective coating or other effective means.

3.1.1 Application of this Part

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## **Part 3 Transport of dangerous goods to which special provisions apply**

### **3.1.1 Application of this Part**

This Part applies if a special provision applies to dangerous goods in the Dangerous Goods List and that special provision prohibits the transport of the goods by road or rail, or imposes a restriction on the way the goods are to be transported by road or rail.

*Note* Column 6 of the Dangerous Goods List specifies whether a special provision applies to dangerous goods, and Chapter 3.3 of the ADG Code lists the special provisions that apply.

### **3.1.2 Consignor's duties**

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

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

Offence provision.

### **3.1.3 Packer's duties**

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

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

Offence provision.

### **3.1.4 Loader's duties**

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

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

Offence provision.

3.1.5 Prime contractor's and rail operator's duties

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### **3.1.5 Prime contractor's and rail operator's duties**

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

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

Offence provision.

### **3.1.6 Driver's duties**

A person must not drive a road vehicle transporting dangerous goods if the person knows, or ought reasonably to know:

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

Offence provision.

## **Part 4 Packaging**

### **Division 4.1 General**

#### **4.1.1 Packing of dangerous goods in limited or excepted quantities**

- (1) This Part does not apply to dangerous goods that are:
  - (a) goods packed in limited quantities within the meaning of clause 1.2.9; or
  - (b) goods packed in excepted quantities within the meaning of clause 5.1.1(6).
- (2) To avoid doubt, this Part (including clause 4.2.1 and the offence provisions) applies to dangerous goods that:
  - (a) are purported to be packed in limited quantities but do not comply with the requirements of clause 1.2.9; or
  - (b) are purported to be packed in excepted quantities but do not comply with the requirements of clause 5.1.1(6).

*Note.* Clauses 1.2.9 and 5.1.1(6) respectively require compliance with Chapter 3.4 and 3.5 of the ADG Code.

#### **4.1.2 References to Part 4 of the ADG Code include Dangerous Goods List requirements**

In this Part, a reference to dangerous goods being packed in accordance with any relevant provision in Part 4 of the ADG Code is to be read as including a reference to the goods being packed in accordance with any packing requirement specified in relation to the goods in the Dangerous Goods List.

### **Division 4.2 Suitability and design of packaging**

#### **4.2.1 Suitability of packaging for transport**

- (1) Packaging is unsuitable for the transport of dangerous goods if:
  - (a) it is required to undergo performance tests under Part 6 of the ADG Code, and it is not approved packaging; or
  - (b) it does not meet any relevant standards or requirements specified by Part 4 or 6 of the ADG Code (including requirements with respect to inspection, maintenance and repair); or
  - (c) its use, or reuse, for the transport of the goods does not comply with Part 4 or 6 of the ADG Code; or

#### 4.2.2 Marking packaging

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- (d) its use for the transport of the goods is prohibited by a determination made under Division 1.5; or
  - (e) it is incompatible with the goods; or
  - (f) it is damaged or defective to the extent that it is not safe to use to transport the goods; or
  - (g) for goods purported to be packed in limited quantities—the packaging of the goods fails to comply with Chapter 3.4 of the ADG Code; or
  - (h) for goods purported to be packed in excepted quantities—the packaging of the goods fails to comply with Chapter 3.5 of the ADG Code.
- (2) A freight container is also unsuitable for use as a bulk container for the transport of dangerous goods if it does not have affixed to it a Safety Approval Plate as required under the International Convention for Safe Containers 1972.

#### 4.2.2 Marking packaging

- (1) A person must not apply any marking required by Part 6 of the ADG Code on packaging if the packaging is not of a design approved under clause 4.2.4.
- Offence provision.
- (2) A person must not apply a marking mentioned in Part 6 of the ADG Code on packaging if the marking is not appropriate for the packaging.
- Offence provision.
- {(3) An offence against subclause (1) or (2) is an offence of strict liability.}

#### 4.2.3 Applications for approval of packaging design

- (1) This clause applies to packaging that is required to undergo tests under Part 6 of the ADG Code.
- (2) A person may apply to the Competent Authority for the approval of a design of packaging to which this clause applies for use in the transport of dangerous goods.
- Examples* Portable tanks, MEGCs, tanks on tank vehicles, pressure receptacles, aerosol dispensers, IBCs, bulk containers and drums, barrels, jerry cans, boxes, bags and composite packaging are some of the kinds of packaging required to undergo tests under Part 6 of the ADG Code. Performance tests include drop, leakproofness, hydraulic and stacking tests.
- (3) An application for approval must:
- (a) be made in accordance with clause 17.1.1; and

#### 4.2.4 Approval of packaging designs

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- (b) include the information required under Part 6 of the ADG Code;  
and
- (c) if a fee is prescribed for the application, be accompanied by the prescribed fee.

#### 4.2.4 Approval of packaging designs

- (1) The Competent Authority may, on application in accordance with clause 4.2.3, approve a design for a packaging for use in the transport of dangerous goods if it is satisfied that a packaging of that design:
  - (a) will comply with, or is permitted by, Part 6 of the ADG Code; and
  - (b) satisfies all the relevant testing and inspection requirements set out in that Part.
- (2) In determining whether packaging of a particular design satisfies any particular testing requirement, the Competent Authority may rely on any test certificate issued by a recognised testing facility (as defined by clause 4.2.5) that complies with clause 4.2.6.
- (3) In giving its approval, the Competent Authority may impose in relation to the approval any condition about the construction, packing, use or maintenance of a packaging manufactured in accordance with the design necessary for the safe use of the packaging to transport dangerous goods.
- (4) A person must not construct, pack or fail to maintain packaging for use in the transport of dangerous goods, or use packaging to transport dangerous goods, if the person knows, or ought reasonably to know, that:
  - (a) a condition about the construction, packing, maintenance or use of the packaging, as the case may be, was imposed in relation to the approval of the design for the packaging; and
  - (b) the construction, packing, failure to maintain, or use is in contravention of the condition.

Offence provision.

#### 4.2.5 Recognised testing facilities

The following testing facilities are *recognised testing facilities* for a packaging design type:

- (a) a testing facility registered by NATA to conduct performance tests under Part 6 of the ADG Code for the packaging design type;
- (b) if NATA has not registered a testing facility to conduct performance tests of that kind — a testing facility in Australia capable of conducting the tests;

4.2.6 Test certificates

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- (c) a facility in a foreign country approved by a public authority of the country to conduct performance tests of that kind.

#### **4.2.6 Test certificates**

- (1) A recognised testing facility may certify in writing that a packaging design type has passed particular performance tests for particular dangerous goods.
- (2) If a performance test is conducted by a testing facility registered by NATA, any test certificate, or report on the test, must:
  - (a) contain any details required under the relevant Chapter of Part 6 of the ADG Code; and
  - (b) be in the appropriate form used by NATA registered testing facilities.
- (3) If a performance test is conducted in Australia by a recognised testing facility that is not registered by NATA:
  - (a) the test must be observed by or for the Competent Authority; and
  - (b) any test certificate, or report on the test, must contain any details required under the relevant Chapter of Part 6 of the ADG Code.

#### **4.2.7 Approval of overpack preparation method**

- (1) The Competent Authority may, on application in accordance with clause 17.1.1, approve a method of preparing an overpack for transport that does not comply with section 5.1.2 of the ADG Code if the Authority considers that the risk involved in using the method is not greater than the risk involved in using a method complying with the section.
- (2) In giving its approval, the Competent Authority may impose in relation to the approval any condition about the use of the overpack necessary for the safe use of the overpack to transport dangerous goods.
- (3) A person must not use an overpack to transport dangerous goods if the person knows, or ought reasonably to know, that:
  - (a) a condition about the use of the overpack was imposed in relation to the approval of the method of preparing the overpack; and
  - (b) the use is in contravention of the condition.

Offence provision.

#### **4.2.8 Authorised body may issue approvals**

- (1) The Competent Authority may authorise a person or body to issue approvals under clauses 4.2.4 and 4.2.7.

4.3.1 Offence to sell or supply non-compliant packaging

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- (2) In giving its authorisation, the Competent Authority may impose in relation to the authorisation any condition it considers appropriate in relation to the issuing of approvals by the person or body.
- (3) In issuing an approval, in addition to complying with any condition imposed under subclause (2), the person or body must also:
  - (a) comply with any relevant requirements imposed by Part 6 of the ADG Code in relation to the issuing of the approval; and
  - (b) give the Competent Authority, in relation to the approval, all of the information listed in clause 17.3.2.
- (4) If a person or body is authorised to issue approvals under this clause:
  - (a) clauses 4.2.3, 4.2.4 and 4.2.7 apply as if a reference in those clauses to the Competent Authority was a reference to the person or body; and
  - (b) Divisions 17.1 and 17.5, to the extent that they deal with approvals, apply as if a reference in those Divisions to the Competent Authority was a reference to the person or body; and
  - (c) a reference in this subordinate instrument to an approval under clause 4.2.4 or 4.2.7 includes a reference to an approval given by the body or other person under clause 4.2.4 or 4.2.7 as applied under paragraph (a); and
  - (d) clauses 19.1.1(f), (g) and (k) apply as if a reference in clause 19.1.1 to the Competent Authority was a reference to the person or body.
- (5) The Competent Authority may withdraw an authorisation granted under this clause at any time.
- (6) The withdrawal of an authorisation does not affect any approval issued by the person or body before the withdrawal took effect.

## **Division 4.3 Prohibition on the sale or supply of non-compliant packaging**

### **4.3.1 Offence to sell or supply non-compliant packaging**

- (1) A person must not sell, supply, or offer to sell or supply, any packaging for use in the transport of particular dangerous goods unless:
  - (a) it is packaging of a design that has been approved under clause 4.2.4, and it is marked in accordance with Part 6 (or, if applicable, Chapter 3.4 or 3.5) of the ADG Code, and, according to the marking, its use is appropriate for those goods; or

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4.4.1 Meaning of general packaging in this Division

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- (b) it complies with the relevant requirements of Parts 4 and 6 (or, if applicable, Chapter 3.4 or 3.5) of the ADG Code (including any relevant marking requirements) and its use is appropriate for those goods.

Offence provision.

{(2) An offence against subclause (1) is an offence of strict liability.}

## **Division 4.4 Offences relating to general packaging**

### **4.4.1 Meaning of *general packaging* in this Division**

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

### **4.4.2 Consignor's duties**

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

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

Offence provision.

### **4.4.3 Packer's duties**

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

Offence provision.

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

Offence provision.

### **4.4.4 Loader's duties**

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

4.4.5 Prime contractor's and rail operator's duties

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Offence provision.

#### 4.4.5 Prime contractor's and rail operator's duties

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

Offence provision.

#### 4.4.6 Driver's duties

A person must not drive a road vehicle transporting dangerous goods in any general packaging if the person knows, or ought reasonably to know, that the packaging is damaged or defective to the extent that it is not safe to use to transport the goods by road.

Offence provision.

### Division 4.5 Offences relating to other packaging

#### 4.5.1 Meaning of *other packaging* in this Division

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

#### 4.5.2 Manufacturers — compliance plates — portable tanks, MEGCs and tank vehicles

- (1) A person who manufactures a portable tank for use in the transport of dangerous goods must attach a compliance plate to the tank in accordance with:
  - (a) if the tank is not made of fibre reinforced plastic — Chapter 6.7 of the ADG Code; or
  - (b) if the tank is made of fibre reinforced plastic — Chapter 6.7 and section 6.9.2.10 of the ADG Code.

Offence provision.

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

Offence provision.

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4.5.3 Owner's duties — portable tanks, demountable tanks and MEGCs

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- (2) Subclause (1) does not apply to a person in relation to a portable tank if Chapter 6.7 and section 6.9.2.10 of the ADG Code permit the marking of the tank instead of the attachment of a compliance plate, and if the tank is marked as required by that Chapter.
- (3) A person who manufactures a tank vehicle for use in the transport of dangerous goods must attach a compliance plate to the vehicle in accordance with section 6.10.2.2 of the ADG Code.

Offence provision.

{(4) An offence against subclause (1), (1A) or (3) is an offence of strict liability.}

### **4.5.3 Owner's duties — portable tanks, demountable tanks and MEGCs**

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

Offence provision.

{(2) An offence against subclause (1) is an offence of strict liability.}

### **4.5.4 Consignor's duties**

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

Offence provision.

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

Offence provision.

{(3) An offence against subclause (1) is an offence of strict liability.}

#### 4.5.5 Packer's duties

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##### **4.5.5 Packer's duties**

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

Offence provision.

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

Offence provision.

##### **4.5.6 Loader's duties**

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

Offence provision.

##### **4.5.7 Prime contractor's and rail operator's duties**

- (1) A prime contractor or rail operator must not transport dangerous goods in any other packaging provided by the prime contractor or rail operator if:
  - (a) the packaging is unsuitable for the transport of the goods; or
  - (b) the goods have not been packed in the packaging in accordance with any relevant provision in Part 4 of the ADG Code.

Offence provision.

- (2) A prime contractor or rail operator must not transport dangerous goods in any other packaging provided by any other person if the prime contractor or rail operator knows, or ought reasonably to know, that:
  - (a) the packaging is unsuitable for the transport of the goods; or
  - (b) the goods have not been packed in the packaging in accordance with any relevant provision in Part 4 of the ADG Code.

Offence provision.

- {(3) An offence against subclause (1) is an offence of strict liability.}

4.5.8 Driver's duties

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### 4.5.8 Driver's duties

A person must not drive a road vehicle transporting dangerous goods in any other packaging if the person knows, or ought reasonably to know, that:

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

Offence provision.

## Division 4.6 Offences relating to overpacks

### 4.6.1 Consignor's duties

- (1) A person must not consign dangerous goods for transport in an overpack if the preparation of the overpack and its contents does not comply with either:

- (a) section 5.1.2 of the ADG Code; or
- (b) an approval under clause 4.2.7.

Offence provision.

{(2) An offence against subclause (1) is an offence of strict liability.}

### 4.6.2 Packer's duties

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

- (a) section 5.1.2 of the ADG Code; or
- (b) an approval under clause 4.2.7.

Offence provision.

### 4.6.3 Loader's duties

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

- (a) section 5.1.2 of the ADG Code; or
- (b) an approval under clause 4.2.7.

Offence provision.

4.6.4 Prime contractor's and rail operator's duties

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#### **4.6.4 Prime contractor's and rail operator's duties**

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

- (a) section 5.1.2 of the ADG Code; or
- (b) an approval under clause 4.2.7.

Offence provision.

#### **4.6.5 Driver's duties**

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

- (a) section 5.1.2 of the ADG Code; or
- (b) an approval under clause 4.2.7.

Offence provision.

5.1.1 Meaning of appropriately marked

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## Part 5 Consignment procedures

*Note.* Section 5.1.3.3 of the ADG Code provides for unused pre-labelled dangerous goods packagings to be identified in order to avoid inappropriate emergency response.

### Division 5.1 Marking and labelling

#### 5.1.1 Meaning of *appropriately marked*

- (1) Any receptacle (other than a cargo transport unit or an overpack) that has a capacity of more than 500 kilograms or litres is ***appropriately marked*** if it is marked and labelled in accordance with Chapters 5.2 and 5.3.3 of the ADG Code.
- (2) Any other package of dangerous goods (other than an overpack) is ***appropriately marked*** if it is marked and labelled in accordance with Chapter 5.2 of the ADG Code.
- (3) An overpack is appropriately marked if it is marked and labelled in accordance with section 5.1.2 of the ADG Code.
- (4) A package of dangerous goods that are packed in limited quantities is also ***appropriately marked*** if it is marked and labelled in accordance with Chapter 3.4 of the ADG Code.
- (5) A package of dangerous goods that are packed in excepted quantities is also ***appropriately marked*** if it is marked and labelled in accordance with Chapter 3.5 of the ADG Code.
- (6) In subclause (5), dangerous goods are ***packed in excepted quantities*** if:
  - (a) the goods are assigned to code E1, E2, E3, E4 or E5 in column 7b of the Dangerous Goods List; and
  - (b) the goods are packed in accordance with Chapter 3.5 of the ADG Code; and
  - (c) the quantity of dangerous goods does not exceed the quantity specified in section 3.5.1.2 of the ADG Code.

#### 5.1.2 Consignor's duties

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

Offence provision.

### 5.1.3 Packer's duties

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

Offence provision.

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

Offence provision.

- (4) Subclause (3) does not apply if the marking or labelling of the package complies with the requirements of the ICAO Technical Instructions or the IMDG Code with respect to the contents of the package.

- (5) A reference to a label in this clause includes a reference to a placard.

- {(6) An offence against subclause (1), (2) or (3) is an offence of strict liability.}

### 5.1.3 Packer's duties

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

Offence provision.

- (2) A person who packs dangerous goods for transport in a package must not mark or label the package with a marking or label about its contents that the person knows, or reasonably ought to know, is false or misleading in a material particular.

Offence provision.

- (3) A person who packs goods for transport in a package must not mark or label the package as if it contained dangerous goods if the person knows, or reasonably ought to know, that it does not contain dangerous goods.

Offence provision.

- (4) Subclause (3) does not apply if the marking or labelling of the package complies with the requirements of the ICAO Technical Instructions or the IMDG Code with respect to the contents of the package.

- (5) A reference to a label in this clause includes a reference to a placard.

5.1.4 Prime contractor's and rail operator's duties

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### 5.1.4 Prime contractor's and rail operator's duties

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

Offence provision.

- (2) A prime contractor or rail operator must not transport dangerous goods in a package if the prime contractor or rail operator knows, or reasonably ought to know, that a marking or label on the package about its contents is false or misleading in a material particular.

Offence provision.

- (3) A prime contractor or rail operator must not transport goods in a package that is marked or labelled as if it contained dangerous goods if the prime contractor or rail operator knows, or reasonably ought to know, that the package does not contain dangerous goods.

Offence provision.

- (4) Subclause (3) does not apply if the marking or labelling of the package complies with the requirements of the ICAO Technical Instructions or the IMDG Code with respect to the contents of the package.

- (5) A reference to a label in this clause includes a reference to a placard.

## Division 5.2 Placarding

### 5.2.1 When load must be placarded

- (1) A load that contains dangerous goods must be placarded if:
  - (a) it contains:
    - (i) dangerous goods in a receptacle, other than an article, with a capacity of more than 500 litres; or
    - (ii) more than 500 kilograms of dangerous goods in a receptacle, other than an article; or
  - (b) it contains an aggregate quantity of dangerous goods of 250 or more (other than specified goods) and those goods include:
    - (i) dangerous goods of UN Division 2.1 that are not aerosols; or
    - (ii) dangerous goods of UN Division 2.3; or

5.2.1 When load must be placarded

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- (iii) dangerous goods of Packing Group I; or
  - (c) it contains dangerous goods of Category A of UN Division 6.2;  
or
  - (d) it contains an aggregate quantity of dangerous goods of UN Division 6.2 (other than Category A) of 10 or more; or
  - (e) it contains an aggregate quantity of dangerous goods of 1 000 or more (other than specified goods).
- (2) A load that contains dangerous goods must be placarded if the load contains specified goods and:
- (a) the specified goods include an aggregate quantity of 2 000 or more of any one UN number from a single place of consignment; or
  - (b) the total gross mass of the specified goods is 8 tonnes or more.

*Note.* This subclause applies separately and in addition to subclause (1). See Table 5.3 of the ADG Code.

- (3) A load that contains dangerous goods, and that is not otherwise required to be placarded under this clause, must be placarded if the load meets the following conditions:
- (a) the load contains a mixture of specified goods and other dangerous goods;
  - (b) the following combined quantity calculation applies:
    - (i) if the load contains dangerous goods referred to in subclause (1)(b)(i)–(iii)—the aggregate quantity of those goods, plus 10% of the total gross mass of the specified goods, is 250 or more;
    - (ii) otherwise—the aggregate quantity of dangerous goods that are not specified goods, plus 25% of the total gross mass of the specified goods, is 1 000 or more.
- (4) In this clause, *specified goods* means:
- (a) dangerous goods that are packed in limited quantities;
  - (b) any of the following:
    - (i) fireworks that are bon bons, party poppers or sparklers;
    - (ii) domestic smoke detectors containing radioactive material;
    - (iii) lighters or lighter refills containing flammable gas;
    - (iv) fire extinguishers containing compressed or liquefied gas, up to a net mass of 23 kg;
  - (c) a combination of the dangerous goods referred to in paragraphs (a) and (b).

*Note.* See Note 5 to Table 5.3 of the ADG Code.

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5.2.2 Meaning of appropriately placarded

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### 5.2.2 Meaning of *appropriately placarded*

- (1) A person *placards* a load that contains dangerous goods if the person affixes, stencils, prints or places a label (as defined in the ADG Code) or an emergency information panel (as defined in section 5.3.1.3 of the ADG Code) in relation to the load on any thing that is being, or that is to be, used to transport the load.
- (2) In this Division, a placard load is *appropriately placarded* if it is placarded in accordance with Chapter 5.3 of the ADG Code.

### 5.2.3 Consignor's duties

- (1) A person must not consign a placard load for transport if the load is not appropriately placarded.

Offence provision.

- (2) A person must not consign a placard load for transport if the placarding of the load is false or misleading in a material particular.

Offence provision.

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

Offence provision.

- (4) Subclause (3) does not apply if the placarding of the cargo transport unit complies with the requirements of the ICAO Technical Instructions or the IMDG Code with respect to the contents of the cargo transport unit.

- (5) A person must not consign a load of dangerous goods (other than a placard load) for transport in or on a cargo transport unit if:

- (a) the load is placarded; and
- (b) the placarding is false or misleading in a material particular.

Offence provision.

### 5.2.4 Loader's duties

- (1) A person who loads dangerous goods on to a vehicle for transport must ensure that the load is appropriately placarded, if the person knows, or reasonably ought to know, that the goods are a placard load.

Offence provision.

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5.2.5 Prime contractor's and rail operator's duties

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

Offence provision.

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

Offence provision.

- (4) Subclause (3) does not apply if the placarding of the load complies with the requirements of the ICAO Technical Instructions or the IMDG Code with respect to the contents of the load.

- (5) A person who loads dangerous goods (other than a placard load) into or on to a cargo transport unit for transport in or on the unit must not placard the load with placarding that the person knows, or reasonably ought to know, is false or misleading in a material particular.

Offence provision.

### **5.2.5 Prime contractor's and rail operator's duties**

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

Offence provision.

- (2) A prime contractor or rail operator must not transport a placard load if the prime contractor or rail operator knows, or reasonably ought to know, that the placarding of the load is false or misleading in a material particular.

Offence provision.

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

Offence provision.

- (4) Subclause (3) does not apply if the placarding of the cargo transport unit complies with the requirements of the ICAO Technical

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5.2.6 Driver's duties

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Instructions or the IMDG Code with respect to the contents of the cargo transport unit.

- (5) A prime contractor or rail operator must not transport a load of dangerous goods (other than a placard load) in or on a cargo transport unit if:
- (a) the load is placarded; and
  - (b) the person knows, or reasonably ought to know, that the placarding is false or misleading in a material particular.

Offence provision.

### **5.2.6 Driver's duties**

- (1) A person must not drive a road vehicle transporting dangerous goods if the person knows, or reasonably ought to know, that:
- (a) the goods are a placard load; and
  - (b) the load is not appropriately placarded.

Offence provision.

- (2) A person must not drive a road vehicle transporting a placard load if the person knows, or reasonably ought to know, that the placarding of the load is false or misleading in a material particular.

Offence provision.

- (3) A person must not drive a road vehicle that is, or that incorporates, a cargo transport unit that is placarded as if it was a placard load if the person knows or reasonably ought to know that the vehicle does not contain dangerous goods.

Offence provision.

- (4) A person must not drive a road vehicle that is, or that incorporates, a cargo transport unit if:
- (a) the unit is transporting a load of dangerous goods (other than a placard load); and
  - (b) the load is placarded; and
  - (c) the person knows, or reasonably ought to know, that the placarding is false or misleading in a material particular.

Offence provision.

## **Part 6 Safety standards — vehicles and equipment**

### **6.1.1 Owner's duties**

- (1) The owner of a vehicle must not use the vehicle, or permit it to be used, to transport dangerous goods if the vehicle or its equipment does not comply with Chapters 4.4 and 6.10 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

### **6.1.2 Consignor's duties**

A person must not consign dangerous goods for transport in or on a vehicle if the person knows, or reasonably ought to know, that the vehicle or its equipment does not comply with Chapters 4.4 and 6.10 of the ADG Code.

Offence provision.

### **6.1.3 Loader's duties**

A person must not load dangerous goods on to a vehicle for transport if the person knows, or reasonably ought to know, that the vehicle or its equipment does not comply with Chapters 4.4 and 6.10 of the ADG Code.

Offence provision.

### **6.1.4 Prime contractor's and rail operator's duties**

- (1) A prime contractor or rail operator must not use a vehicle to transport dangerous goods if the vehicle or its equipment does not comply with Chapters 4.4 and 6.10 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

### **6.1.5 Driver's duties**

A person must not drive a road vehicle transporting dangerous goods if the person knows, or reasonably ought to know, that the vehicle or its equipment does not comply with Chapters 4.4 and 6.10 of the ADG Code.

Offence provision.

## **Part 7 Transport operations relating to certain dangerous goods**

### **Division 7.1 Self-reactive substances, organic peroxides and certain other substances**

#### **7.1.1 Application**

- (1) This Division applies to the transport of the following types of dangerous goods:
  - (a) gases of UN Class 2;
  - (b) self-reactive substances of UN Division 4.1;
  - (c) organic peroxides of UN Division 5.2;
  - (d) other substances for which:
    - (i) the proper shipping name contains the word ‘STABILIZED’; and
    - (ii) the self-accelerating decomposition temperature (as determined in accordance with Part 2 of the ADG Code) when presented for transport in a packaging is 50° Celsius or lower;
  - (e) toxic substances of UN Division or Subsidiary Hazard 6.1;
  - (f) infectious substances of UN Division 6.2;
  - (g) dangerous when wet substances of UN Division 4.3.
- (2) Repealed
- (3) Repealed

#### **7.1.2 Consignor’s duties**

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

Offence provision.

#### **7.1.3 Loader’s duties**

- (1) A person must not load dangerous goods to which this Division applies for transport by road or rail in a cargo transport unit other than in accordance with Chapter 7.1 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

7.1.4 Prime contractor's and rail operator's duties

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### 7.1.4 Prime contractor's and rail operator's duties

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

Offence provision.

- (2) A prime contractor or rail operator responsible for the transport of one or more packages of infectious substances of UN Division 6.2 who becomes aware of damage to, or leakage from, the package or any of the packages must comply with section 7.1.7.2.2 of the ADG Code.

Offence provision.

### 7.1.5 Driver's duties

A person must not drive a road vehicle transporting dangerous goods to which this Division applies if the person knows, or reasonably ought to know, that the goods are not being transported in accordance with Chapter 7.1 of the ADG Code.

Offence provision.

## Division 7.2 Goods too dangerous to be transported

*Note* Section 83 of the Act provides for the duties of consignors of goods too dangerous to be transported, prescribes the people who are to be regarded as the consignors of such goods and provides for the relevant offence and penalty for consigning them for transport.

### 7.2.1 Application

This Division applies to goods too dangerous to be transported.

### 7.2.2 Loader's duties

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

Offence provision.

### 7.2.3 Prime contractor's and rail operator's duties

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

Offence provision.

7.2.4 Driver's duties

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### 7.2.4 Driver's duties

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

Offence provision.

## Division 7.3 Nominally empty storage vessels

### 7.3.1 Application

This Division applies to tanks or hoppers specified in section 7.2.7.1 of the ADG Code (*nominally empty storage vessels*).

### 7.3.2 Consignor's duties

A person must not consign nominally empty storage vessels for transport in a cargo transport unit if the person knows, or reasonably ought to know, that the storage vessels are not loaded or stowed, or cannot be transported or unloaded, in accordance with Chapter 7.2 of the ADG Code.

Offence provision.

### 7.3.3 Loader's duties

- (1) A person must not load nominally empty storage vessels for transport by road or rail in a cargo transport unit other than in accordance with Chapter 7.2 of the ADG Code.

Offence provision.

{(2) An offence against subclause (1) is an offence of strict liability.}

### 7.3.4 Prime contractor's and rail operator's duties

A prime contractor or rail operator must not transport nominally empty storage vessels if the contractor or rail operator knows, or reasonably ought to know, that the transport does not comply with Chapter 7.2 of the ADG Code.

Offence provision.

### 7.3.5 Driver's duties

A person must not drive a road vehicle transporting nominally empty storage vessels if the person knows, or reasonably ought to know, that the storage vessels are not being transported in accordance with Chapter 7.2 of the ADG Code.

Offence provision.

8.1.1 Consignor's duties

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## **Part 8 Stowage and restraint**

### **8.1.1 Consignor's duties**

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

Offence provision.

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

Offence provision.

### **8.1.2 Loader's duties**

- (1) A person who loads a load that contains dangerous goods that is a placard load on to a vehicle for transport must ensure that the load is stowed, loaded and restrained in accordance with Chapter 8.1 of the ADG Code.

Offence provision.

- (2) A person who loads for transport in or on a vehicle dangerous goods that are in a cargo transport unit must ensure that the cargo transport unit is restrained in accordance with Chapter 8.2 of the ADG Code.

Offence provision.

- {(3) An offence against subclause (1) is an offence of strict liability.}

### **8.1.3 Prime contractor's and rail operator's duties**

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

Offence provision.

#### 8.1.4 Driver's duties

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

Offence provision.

#### **8.1.4 Driver's duties**

- (1) A person must not drive a road vehicle transporting a load that contains dangerous goods that is a placard load if the person knows, or reasonably ought to know, that the goods or their packaging have not been stowed or loaded, or are not restrained, in accordance with Chapter 8.1 of the ADG Code.

Offence provision.

- (2) A person must not drive a road vehicle transporting dangerous goods in a cargo transport unit if the person knows, or reasonably ought to know, that the goods or their packaging are not restrained in accordance with Chapter 8.2 of the ADG Code.

Offence provision.

## **Part 9 Segregation**

### **9.1.1 Application of Part**

- (1) This Part applies to:
  - (a) the transport of a placard load; and
  - (b) the transport of a load that contains dangerous goods that is not a placard load if the load contains dangerous goods of UN Division 2.3, UN Class 6 or UN Class 8, or dangerous goods that have a Subsidiary Hazard of 6.1 or 8, that are being, or are to be, transported with food or food packaging.
- (2) Dangerous goods packed in limited quantities do not need to comply with this Part.

### **9.1.2 Exception for certain goods for driver's personal use**

Despite clauses 9.1.3 to 9.1.7, food and food packaging may be transported on a road vehicle with dangerous goods if the food or packaging is in the road vehicle's cabin and is for the driver's personal use.

### **9.1.3 Consignor's duties**

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

- (a) the vehicle is, in the same journey, transporting incompatible goods; and
- (b) the dangerous goods will not be segregated from the incompatible goods in accordance with:
  - (i) Part 9 of the ADG Code; or
  - (ii) any approval under clause 9.1.9.

Offence provision.

### **9.1.4 Loader's duties**

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

- (a) the vehicle is, in the same journey, transporting incompatible goods; and
- (b) the dangerous goods will not be segregated from the incompatible goods in accordance with:
  - (i) Part 9 of the ADG Code; or
  - (ii) any approval under clause 9.1.9.

Offence provision.

9.1.5 Prime contractor's duties

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### 9.1.5 Prime contractor's duties

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

- (a) the road vehicle is, in the same journey, transporting incompatible goods; and
- (b) the dangerous goods are not segregated from the incompatible goods in accordance with:
  - (i) Part 9 of the ADG Code; or
  - (ii) any approval under clause 9.1.9.

Offence provision.

### 9.1.6 Rail operator's duties

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

- (a) the train is, in the same journey, transporting incompatible goods; and
- (b) the dangerous goods are not segregated from the incompatible goods in accordance with:
  - (i) Part 9 of the ADG Code; or
  - (ii) any approval under clause 9.1.9.

Offence provision.

### 9.1.7 Driver's duties

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

- (a) the road vehicle is, in the same journey, transporting incompatible goods; and
- (b) the dangerous goods are not segregated from the incompatible goods in accordance with:
  - (i) Part 9 of the ADG Code; or
  - (ii) any approval under clause 9.1.9.

Offence provision.

### 9.1.8 Approvals — Type II segregation devices

- (1) An application for approval of a design for a Type II segregation device for use in the transport of dangerous goods must:
  - (a) include any information required under Chapter 6.11 of the ADG Code; and
  - (b) if a fee is prescribed for the application — be accompanied by the prescribed fee.

9.1.9 Approvals — methods of segregation

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- (2) The Competent Authority may, on application in accordance with subclause (1) and clause 17.1.1, approve a design for a Type II segregation device if the design complies with Chapter 6.11 of the ADG Code.

### **9.1.9 Approvals — methods of segregation**

- (1) The Competent Authority may, on application made in accordance with clause 17.1.1, approve a method of segregation not complying with Part 9 of the ADG Code for transporting dangerous and incompatible goods by road, if the Authority considers that:
  - (a) it is impracticable to segregate the goods by a segregation device, or method of segregation, complying with that Part; and
  - (b) the risk involved in using the method to transport the goods by road is not greater than the risk involved in using a device or method complying with that Part to transport the goods by road.
- (2) In giving its approval, the Competent Authority may impose in relation to the approval any condition necessary for the safe transport of dangerous goods.
- (3) A person to whom an approval has been given must not contravene a condition of the approval.

Offence provision.

- {(4) An offence against subclause (3) is an offence of strict liability.}

## **Part 10 Bulk transfer of dangerous goods**

### **Division 10.1 General**

#### **10.1.1 Meaning of *bulk transfer***

In this Part:

***bulk transfer*** means the transfer by gravity, pump or pressure differential of liquid, solid or gaseous dangerous goods, by the use of pipework or hose, into or out of a tank vehicle, or into or out of a portable tank, demountable tank, bulk container, pressure drum, tube, MEGC or IBC that is on a vehicle.

### **Division 10.2 Equipment and transfer**

#### **10.2.1 Transferor's duties — hose assemblies**

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

Offence provision.

- (2) A person must not use a hose assembly for the bulk transfer of dangerous goods if the person knows, or reasonably ought to know, that the hose assembly:
  - (a) has not been constructed, assembled or maintained in accordance with Chapter 10.1 of the ADG Code; or
  - (b) has not been inspected or tested at the intervals, or in the way, required under that Chapter; or
  - (c) did not satisfy a test under that Chapter.

Offence provision.

#### **10.2.2 Transferor's duties — general**

- (1) A person engaged in the bulk transfer of dangerous goods must ensure that the goods are transferred:
  - (a) in accordance with Chapter 10.2 of the ADG Code; and
  - (b) in a way that eliminates the risk, or if it is not possible to eliminate the risk, that minimises the risk to the maximum extent that is practicable.

Offence provision.

### 10.2.3 Occupier's duties

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- (2) A person engaged in the bulk transfer of dangerous goods must not transfer dangerous goods if the person knows, or reasonably ought to know, that:
- (a) the receiving receptacle or the transfer equipment is incompatible with the dangerous goods; or
  - (b) the receptacle contains incompatible goods.

Offence provision.

- (3) If dangerous goods leak, spill or accidentally escape during a bulk transfer, the person transferring the goods:
- (a) must immediately stop transferring the goods; and
  - (b) must take all practicable steps to avert, eliminate or minimise risk; and
  - (c) must not start transferring the goods again until the conditions causing the leak, spill or escape have been rectified.

Offence provision.

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

### 10.2.3 Occupier's duties

- (1) The occupier of premises where bulk transfer of dangerous goods occurs must ensure that any hose assembly on the premises that is used, or that is intended to be used, for the transfer (other than a hose assembly brought onto the premises on the vehicle involved in the transfer):
- (a) has been constructed, assembled and maintained in accordance with Chapter 10.1 of the ADG Code; and
  - (b) has been inspected and tested at the intervals, and in the way, required under that Chapter; and
  - (c) satisfies each test under that Chapter.

Offence provision.

- (2) The occupier of premises where the bulk transfer of dangerous goods occurs must ensure that the goods are transferred:
- (a) in accordance with Chapter 10.2 of the ADG Code; and
  - (b) in a way that averts, eliminates or minimises risk.

Offence provision.

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

Offence provision.

- {(4) An offence against subclause (3) is an offence of strict liability.}

#### 10.2.4 Prime contractor's duties

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- {(5) It is a defence to a prosecution for an offence against subclause (2) that the person complied with that subclause as far as practicable.}

#### **10.2.4 Prime contractor's duties**

- (1) A prime contractor engaged in the bulk transfer of dangerous goods must ensure that any hose assembly that is used, or that is intended to be used, for the transfer of the dangerous goods (other than a hose assembly for which the prime contractor is not responsible):
    - (a) has been constructed, assembled and maintained in accordance with Chapter 10.1 of the ADG Code; and
    - (b) has been inspected and tested at the intervals, and in the way, required under that Chapter; and
    - (c) satisfies each test under that Chapter.Offence provision.
  - (2) A prime contractor engaged in the bulk transfer of dangerous goods must ensure that dangerous goods are transferred:
    - (a) in accordance with Chapter 10.2 of the ADG Code; and
    - (b) in a way that averts, eliminates or minimises risk.Offence provision.
  - (3) The prime contractor must keep, in accordance with section 10.1.3.4 of the ADG Code, accurate records of all maintenance work, and each inspection and test, carried out on the hose assembly.  
Offence provision.
- {(4) An offence against subclause (1) or (3) is an offence of strict liability.}
- {(5) It is a defence to a prosecution for an offence against subclause (2) that the person complied with that subclause as far as practicable.}

#### **10.2.5 Rail operator's duties**

- (1) A rail operator engaged in the bulk transfer of dangerous goods must ensure that any hose assembly that is used, or that is intended to be used, for the transfer of the dangerous goods (other than a hose assembly for which the rail operator is not responsible):
  - (a) has been constructed, assembled and maintained in accordance with Chapter 10.1 of the ADG Code; and
  - (b) has been inspected and tested at the intervals, and in the way, required under that Chapter; and
  - (c) satisfies each test under that Chapter.Offence provision.

10.3.1 Application of Division

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{(2) An offence against subclause (1) is an offence of strict liability.}

## Division 10.3 Filling ratio and ullage

### 10.3.1 Application of Division

This Division applies to, and in relation to, bulk transfer into a tank vehicle.

### 10.3.2 Transferor's duties

- (1) A person engaged in the bulk transfer of dangerous goods must ensure that:
- (a) for dangerous goods of UN Class 2 that are not in the form of refrigerated liquid — the quantity of the goods in the tank to which the goods are transferred does not exceed the maximum permitted filling ratio set out in section 10.3.2 of the ADG Code; and
  - (b) in any other case — the ullage in the tank complies with section 10.3.1 of the ADG Code.

Offence provision.

- (2) If:
- (a) a person is engaged in the bulk transfer of goods that are not dangerous goods to a tank (*tank A*); and
  - (b) tank A is on, or part of, a vehicle; and
  - (c) the person knows, or reasonably ought to know, that the vehicle:
    - (i) is carrying dangerous goods in another tank or in another compartment of tank A; or
    - (ii) is likely to carry dangerous goods in another tank, or in another compartment of tank A;

before tank A is emptied of the non-dangerous goods;

the person must ensure that the ullage in tank A in respect of the non-dangerous goods complies with section 10.3.1 of the ADG Code as if the goods were dangerous goods.

Offence provision.

- {(3) It is a defence to a prosecution for an offence against subclause (1) or (2) that the person complied with the subclause as far as practicable.}

10.3.3 Prime contractor's and rail operator's duties

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### 10.3.3 Prime contractor's and rail operator's duties

- (1) A prime contractor or rail operator must not transport dangerous goods in a tank if:
  - (a) for dangerous goods of UN Class 2 that are not in the form of refrigerated liquid — the quantity of goods in the tank exceeds the maximum permitted filling ratio set out in section 10.3.2 of the ADG Code; or
  - (b) in any other case — the ullage in the tank does not comply with section 10.3.1 of the ADG Code.

Offence provision.

- (2) If:
  - (a) a prime contractor or rail operator uses a vehicle to transport a tank (***tank A***) containing goods that are not dangerous goods; and
  - (b) at the same time uses the vehicle to also transport dangerous goods in another tank or in another compartment of tank A;the prime contractor or rail operator must ensure that the ullage in tank A in respect of the non-dangerous goods complies with section 10.3.1 of the ADG Code as if the goods were dangerous goods.

Offence provision.

- {(3) An offence against subclause (1) or (2) is an offence of strict liability.}

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

### 10.3.4 Driver's duties

- (1) A person must not drive a road tank vehicle that is transporting dangerous goods if the person knows, or reasonably ought to know, that:
  - (a) for dangerous goods of UN Class 2 that are not in the form of refrigerated liquid — the quantity of goods in the tank exceeds the maximum permitted filling ratio set out in section 10.3.2 of the ADG Code; or
  - (b) in any other case — the ullage in the tank does not comply with section 10.3.1 of the ADG Code.

Offence provision.

- (2) A person must not drive a road vehicle if:
  - (a) the vehicle has a tank (***tank A***) containing goods that are not dangerous goods; and

10.3.4 Driver's duties

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- (b) the vehicle at the same time contains dangerous goods in another tank or in another compartment of tank A; and
- (c) the person knows, or reasonably ought to know, that ullage in tank A in respect of the non-dangerous goods would not comply with section 10.3.1 of the ADG Code if the goods were dangerous goods.

Offence provision.

## **Part 11 Documentation**

### **Division 11.1 Transport documentation**

#### **11.1.1 False or misleading information**

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

Offence provision.

*Example of false information in transport documentation* A person named as consignor of the dangerous goods if the person is not the consignor of the goods.

#### **11.1.2 Consignor's duties — transport by road**

- (1) A person must not consign dangerous goods for transport in or on a road vehicle if the prime contractor or driver of the road vehicle does not have transport documentation for the goods.

Offence provision.

- (2) A person must not consign dangerous goods for transport by road if:
  - (a) the person knows, or reasonably ought to know, that the goods will be divided into, and transported in, separate loads; and
  - (b) the prime contractor, or the driver of each road vehicle transporting the load, has not been given separate transport documentation for each load.

Offence provision.

- {(3) For this clause:
  - (a) an offence against subclause (1) is an offence of strict liability; and
  - (b) strict liability applies to subclause (2)(b).}

#### **11.1.3 Consignor's duties — transport by rail**

- (1) A person must not consign dangerous goods for transport in or on a unit of rolling stock if the rail operator does not have transport documentation for the goods.

Offence provision.

- (2) For the purposes of subclause (1), a rail operator is to be taken to have transport documentation if the contents of the documentation have been communicated to the rail operator by means of electronic data processing or electronic data interchange.

- {(3) An offence against subclause (1) is an offence of strict liability.}

11.1.4 Prime contractor's duties

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**11.1.4 Prime contractor's duties**

- (1) A prime contractor must ensure that a person does not drive a road vehicle used by the prime contractor to transport dangerous goods if:
  - (a) the person has not been given transport documentation for the goods; and
  - (b) the documentation is not readily able to be located in the vehicle in accordance with Chapter 11.1 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

**11.1.5 Rail operator's duties**

- (1) A rail operator must not transport dangerous goods by rail unless the driver of the train transporting the goods has been given transport documentation for the goods.

Offence provision.

- {(2) For the purposes of subclause (1), a driver is to be taken to have transport documentation if the contents of the documentation have been communicated to him or her by means of electronic data processing or electronic data interchange.}

- {(3) An offence against subclause (1) is an offence of strict liability.}

**11.1.6 Driver's duties**

- (1) The driver of a road vehicle transporting dangerous goods:
  - (a) must carry transport documentation for the goods; and
  - (b) must ensure that the documentation is located in the vehicle in accordance with Chapter 11.1 of the ADG Code.

Offence provision.

- (2) The driver of a road vehicle transporting dangerous goods must produce the transport documentation for the goods for inspection by an authorised officer, or an officer of an emergency service, if the officer asks the driver to produce the documentation for inspection.

Offence provision.

- {(3) An offence against subclause (1) or (2) is an offence of strict liability.}

**11.1.7 Train driver's duties**

- (1) This clause does not apply if the train driver transporting dangerous goods is in a depot or yard, or is engaged in shunting operations, and the transport documentation for the goods is readily available

#### 11.1.8 Prime contractor's duties — retention of documents

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elsewhere in the immediate vicinity of the depot, yard, or those operations.

- (2) A person must not drive a train that the person knows, or reasonably ought to know, is transporting dangerous goods, if the person does not have transport documentation for the goods.

Offence provision.

- (3) A train driver transporting dangerous goods must produce the transport documentation for the goods for inspection by an authorised officer or an officer of an emergency service, if the officer asks the driver to produce the documentation for inspection.

Offence provision.

- {(4) An offence against subclause (3) is an offence of strict liability.}

#### 11.1.8 Prime contractor's duties — retention of documents

- (1) This clause applies if the Act, this subordinate instrument or the ADG Code requires a prime contractor to create or use a document in relation to the transport of dangerous goods.

- (2) The prime contractor must retain the document, or a copy of the document, for at least 3 months after the transport of the dangerous goods by the prime contractor finishes.

Offence provision.

- (3) It is a failure to comply with subclause (2) if the prime contractor:
- (a) does not retain a legible hard copy of the document, or a legible copy of the document in electronic form, for the 3 months; or
  - (b) cannot produce, at any time during the 3 months at the request of an authorised officer, a legible hard copy of the document or a legible copy of the document in electronic form.

### Division 11.2 Emergency information

#### 11.2.1 Meaning of *required emergency information*

In this Division:

*required emergency information* means:

- (a) emergency information that complies with Chapter 11.2 of the ADG Code; or
- (b) emergency information that is approved under clause 11.2.7.

11.2.2 Consignor's duties

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### 11.2.2 Consignor's duties

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

Offence provision.

### 11.2.3 Prime contractor's duties

- (1) A prime contractor must not use a road vehicle to transport a placard load if:
  - (a) the road vehicle is not equipped with an emergency information holder that complies with Chapter 11.2 of the ADG Code; or
  - (b) the required emergency information for the dangerous goods in the load is not in the holder.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

### 11.2.4 Rail operator's duties

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

Offence provision.

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

- {(3) An offence against subclause (1) is an offence of strict liability.}

### 11.2.5 Driver's duties

- (1) A person must not drive a road vehicle transporting a placard load if:
  - (a) the road vehicle is not equipped with an emergency information holder that complies with Chapter 11.2 of the ADG Code; and
  - (b) the required emergency information for the dangerous goods in the load provided by the consignor of the goods, or by the prime contractor for the transport of the goods, is not in the holder.

Offence provision.

- (2) The driver of a road vehicle transporting a placard load must ensure that the road vehicle's emergency information holder contains only:
  - (a) the required emergency information for the dangerous goods in the load; and

#### 11.2.6 Train driver's duties

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- (b) the transport documentation for the goods.

Offence provision.

- (3) The driver of a road vehicle transporting a placard load must produce the required emergency information for the dangerous goods in the load for inspection by an authorised officer, or an officer of an emergency service, if the officer asks the driver to produce the information for inspection.

Offence provision.

- {(4) An offence against subclause (1), (2) or (3) is an offence of strict liability.}

#### 11.2.6 Train driver's duties

- (1) A person must not drive a train that is transporting a placard load if the required emergency information for the dangerous goods in the load is not in the train driver's cab.

Offence provision.

- (2) A train driver transporting a placard load must produce the required emergency information for the dangerous goods in the load for inspection by an authorised officer or an officer of an emergency service, if the officer asks the driver to produce the information for inspection.

Offence provision.

- (3) Subclauses (1) and (2) do not apply if the train driver transporting dangerous goods is in a depot or yard, or is engaged in shunting operations, and the required emergency information for the goods is readily available elsewhere in the immediate vicinity of the depot, yard, or those operations.

- {(4) An offence against subclause (1) or (2) is an offence of strict liability.}

#### 11.2.7 Approvals — emergency information

The Competent Authority may, on application in accordance with clause 17.1.1 or on the Authority's own initiative, approve emergency information that does not comply with Chapter 11.2 of the ADG Code if the Authority considers that use of the information would be as accurate, and at least as convenient and efficient, as information that complies with the Chapter.

## **Division 11.3 Dangerous goods packed in limited quantities**

### **11.3.1 Consignor's duties**

A person must not consign dangerous goods that are packed in limited quantities for transport unless the person has provided the prime contractor with the information required by section 3.4.12.1 of the ADG Code in the form required by that clause.

Offence provision.

### **11.3.2 Prime contractor's duties**

A prime contractor who receives information under section 3.4.12.1 of the ADG Code must ensure that the information is readily ascertainable during transport of the dangerous goods.

Offence provision.

### **11.3.3 False or misleading information**

In providing information under section 3.4.12.1 of the ADG Code, a person must not include information that the person knows, or reasonably ought to know, is false or misleading in a material particular.

Offence provision.

## **Part 12 Safety equipment**

### **12.1.1 Owner's duties**

- (1) The owner of a road vehicle must not use the road vehicle, or permit the road vehicle to be used, to transport a placard load if the road vehicle is not equipped with:
  - (a) fire extinguishers and portable warning devices that comply with Part 12 of the ADG Code; and
  - (b) any other equipment required under that Part.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

### **12.1.2 Prime contractor's duties**

- (1) A prime contractor must not use a road vehicle to transport a placard load if the road vehicle is not equipped with:
  - (a) fire extinguishers and portable warning devices that comply with Part 12 of the ADG Code; and
  - (b) any other equipment required under that Part.

Offence provision.

- (2) A prime contractor must not use a road vehicle to transport a placard load if the prime contractor knows, or reasonably ought to know, that the equipment for the road vehicle mentioned in subclause (1):
  - (a) has not been inspected or tested in accordance with the Part; or
  - (b) is not in good repair or is not in proper working order.

Offence provision.

- {(3) An offence against subclause (1) or (2) is an offence of strict liability.}

### **12.1.3 Driver's duties**

- (1) A person must not drive a road vehicle transporting a placard load if the road vehicle is not equipped with:
  - (a) fire extinguishers and portable warning devices that comply with Part 12 of the ADG Code; and
  - (b) any other equipment required under that Part.

Offence provision.

- (2) A person must not drive a road vehicle transporting a placard load if the person knows, or reasonably ought to know, that the equipment for the road vehicle mentioned in subclause (1):
  - (a) is not stowed in accordance with Part 12 of the ADG Code; or

12.1.3 Driver's duties

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- (b) has not been inspected or tested in accordance with that Part; or
- (c) is not in good repair or is not in proper working order.

Offence provision.

{(3) An offence against subclause (1) is an offence of strict liability.}

## **Part 13 Procedures during transport**

### **Division 13.1 Immobilised and stopped vehicles**

#### **13.1.1 Driver's duties**

- (1) This clause applies if a road vehicle transporting a placard load:
  - (a) is broken down or otherwise immobilised, or has stopped, on a road; and
  - (b) is a traffic hazard.
- (2) The driver must alert other road users of the hazard in accordance with Part 13 of the ADG Code.

Offence provision.

- (3) A driver does not commit an offence against subclause (2) with respect to a requirement under Part 13 of the ADG Code concerning the use of warning triangles on a road if the driver uses warning triangles in accordance with the requirements of rule 227 of the Australian Road Rules.

{(4) An offence against subclause (2) is an offence of strict liability.}

#### **13.1.2 Prime contractor's duties**

- (1) If a prime contractor knows or ought reasonably to know that a road vehicle transporting a placard load has broken down or is otherwise immobilised on a road, the prime contractor must, as soon as practicable, ensure that the road vehicle is:
  - (a) repaired so that it can be driven safely off the road; or
  - (b) towed to a place where it can be repaired.

Offence provision.

- (2) The prime contractor must:
  - (a) remove the dangerous goods from the road vehicle before the road vehicle is repaired or towed; and
  - (b) transport the dangerous goods from the place of the breakdown or immobilisation;

if the risk involved in complying with paragraphs (a) and (b) is not greater than the risk involved in not complying with the paragraphs.

Offence provision.

- (3) If the road vehicle is towed while still carrying dangerous goods that would require the driver of the vehicle to hold a dangerous goods driver licence, the prime contractor must ensure that the driver of the tow truck towing the vehicle:

### 13.1.3 Rail operator's duties

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- (a) holds a dangerous goods driver licence that would authorise him or her to drive a vehicle with those dangerous goods; or
- (b) is accompanied in the cabin of the tow truck by a person who holds a dangerous goods driver licence that would authorise him or her to drive a vehicle with those dangerous goods.

Offence provision.

### 13.1.3 Rail operator's duties

If a train transporting a placard load fails or is otherwise immobilised, the rail operator must, as soon as practicable, take all appropriate steps to ensure that a dangerous situation does not arise.

Offence provision.

## Division 13.2 General precautions—driver's duties

### 13.2.1 Driving

- (1) The driver of a road vehicle transporting a placard load must not allow anyone else to ride in the vehicle except in accordance with Part 13 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

### 13.2.2 Parking

- (1) The driver of a road vehicle transporting a placard load must not park the road vehicle, or leave the road vehicle standing, in a public or private place except in accordance with Part 13 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

### 13.2.3 Control of ignition sources

- (1) This clause applies to a road vehicle transporting:
  - (a) a load that contains:
    - (i) dangerous goods in a receptacle with a capacity of more than 500 litres; or
    - (ii) more than 500 kilograms of dangerous goods in a receptacle; and
  - (b) the dangerous goods are UN Division 2.1, UN Class 3, 4 or 5 dangerous goods or dangerous goods that have a subsidiary hazard of 2.1, 3, 4 or 5.1.

#### 13.2.4 Unloading

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- (2) The driver of the road vehicle must not:
- (a) have matches or a cigarette lighter in his or her possession in the road vehicle; or
  - (b) smoke in the road vehicle.

Offence provision.

- (3) The driver must do everything practicable to ensure that anyone else in the road vehicle does not:
- (a) have matches or a cigarette lighter in his or her possession; or
  - (b) smoke.

Offence provision.

- {(4) An offence against subclause (2) is an offence of strict liability.}

#### **13.2.4 Unloading**

- (1) The driver of a road vehicle transporting a placard load must not permit the dangerous goods to be unloaded from the vehicle except in accordance with Part 13 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

#### **13.2.5 Detaching trailer**

- (1) The driver of a road vehicle that has attached to it a trailer transporting a placard load must not detach the trailer or permit it to be detached from the vehicle except in accordance with Part 13 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

#### **13.2.6 Road tank vehicle equipped with burner**

- (1) The driver of a road tank vehicle that is transporting a placard load and that is equipped with a burner to heat the load must not operate the burner or permit it to be operated except in accordance with Part 13 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

13.3.1 Parking

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## **Division 13.3 General precautions—prime contractor's duties**

### **13.3.1 Parking**

- (1) A prime contractor must not direct or induce the driver of a road vehicle transporting a placard load to park the road vehicle, or leave the road vehicle standing, in a public or private place except in accordance with Part 13 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

### **13.3.2 Unloading**

- (1) A prime contractor must not direct or induce the driver of a road vehicle transporting a placard load to permit the dangerous goods to be unloaded from the vehicle except in accordance with Part 13 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

### **13.3.3 Detaching trailer**

- (1) A prime contractor must not direct or induce the driver of a road vehicle that has attached to it a trailer transporting a placard load to detach the trailer or permit it to be detached from the vehicle except in accordance with Part 13 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

### **13.3.4 Road tank vehicle equipped with burner**

- (1) A prime contractor must not direct or induce the driver of a road vehicle that is transporting a placard load, and that is equipped with a burner to heat the load, to operate the burner or permit it to be operated except in accordance with Part 13 of the ADG Code.

Offence provision.

- {(2) An offence against subclause (1) is an offence of strict liability.}

## **Part 14 Emergencies**

### **Division 14.1 Emergencies generally**

#### **14.1.1 Duties of drivers of road vehicles**

- (1) This clause applies if a road vehicle transporting dangerous goods is involved in an incident resulting in a dangerous situation.
- (2) The driver of the road vehicle must:
  - (a) notify the prime contractor, the Competent Authority, and the police or fire service, of the incident as soon as practicable; and
  - (b) provide the reasonable assistance required by an authorised officer, or an officer of an emergency service, to deal with the situation.

Offence provision.

#### **14.1.2 Driver's and rail operator's duties**

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

Offence provision.

- (3) On being notified by the train driver of the incident, the rail operator must:
  - (a) notify the police or fire service, of the incident as soon as practicable; and
  - (b) provide any reasonable assistance required by an authorised officer, or an officer of an emergency service, to deal with the situation.

Offence provision.

- {(4) An offence against subclause (3) is an offence of strict liability.}

#### **14.1.3 Prime contractor's and rail operator's duties — food or food packaging**

- (1) This clause applies if:
  - (a) an incident involving a vehicle transporting dangerous goods results in the leakage, spillage or accidental escape of the dangerous goods, or in a fire or explosion; and

14.1.4 Prime contractors and rail operators to inform Competent Authority

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

- (2) In the case of a prime contractor, the prime contractor must ensure that the food or food packaging is not transported from the site of the incident unless the Competent Authority has given permission to the prime contractor to transport the food or food packaging from the site.

Offence provision.

- (3) In the case of a rail operator, the rail operator must:

- (a) notify the Competent Authority of the incident as soon as is practicable after the incident; and
- (b) deal with the food or food packaging as directed by the Competent Authority.

Offence provision.

- (4) A permission under subclause (2) or a direction under subclause (3):
- (a) must be in writing; and
  - (b) must state the name of the person to whom it is given; and
  - (c) must identify the relevant incident; and
  - (d) must identify the food or food packaging to which it relates; and
  - (e) must take into consideration any requirements of the appropriate food and health authorities; and
  - (f) may contain any other information that the Competent Authority considers necessary.

{(5) An offence against subclause (2) or (3) is an offence of strict liability.}

#### **14.1.4 Prime contractors and rail operators to inform Competent Authority**

- (1) This clause applies if a vehicle transporting dangerous goods is involved in an incident resulting in a dangerous situation.
- (2) As soon as practicable after becoming aware of the incident, the prime contractor or rail operator responsible for the transport of the goods must provide the Competent Authority with the following details about the incident:
- (a) where the incident happened;
  - (b) the time and date of the incident;
  - (c) the nature of the incident;
  - (d) the dangerous goods being transported when the incident happened;
  - (e) any other details that the Competent Authority may require.

Offence provision.

#### 14.2.1 Telephone advisory service

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[*Drafting note:* In jurisdictions that have implemented the model rail safety legislation, there is an obligation on rail operators to provide the rail safety regulator with similar information within 72 hours after becoming aware of the incident. If there is a likelihood that the rail safety regulator in a jurisdiction may also be a Competent Authority, these differing obligations (and the obligation in subrule (3)) should be reconciled.]

- (3) Not later than 21 days after the day when the incident happens, the prime contractor or rail operator must give to the Competent Authority a written report about the incident stating the following:
- (a) where the incident happened;
  - (b) the time and date of the incident;
  - (c) the nature of the incident;
  - (d) what the driver believes to be the likely cause of the incident;
  - (e) what the prime contractor or rail operator believes to be the likely cause of the incident;
  - (f) the dangerous goods being transported when the incident happened;
  - (g) the measures taken to control any leak, spill or accidental escape of dangerous goods and any fire or explosion, arising out of the incident;
  - (h) the measures taken after the incident in relation to the dangerous goods involved in the incident.

Offence provision.

{(4) An offence against subclause (2) or (3) is an offence of strict liability.}

## Division 14.2 Emergencies involving placard loads

### 14.2.1 Telephone advisory service

- (1) In this clause:
- telephone advisory service***, for the transport of dangerous goods, means a service providing access by a continuously monitored telephone not located on the carrying vehicle or train to a person competent to give advice about:
- (a) the construction and properties of the receptacles in which the dangerous goods are being transported; and
  - (b) the use of equipment on vehicles on which the dangerous goods are being transported; and
  - (c) the properties of the dangerous goods; and
  - (d) methods of safely handling the dangerous goods; and
  - (e) methods of safely containing and controlling the dangerous goods in a dangerous situation.
- (2) A prime contractor or rail operator must not transport a load that contains:

#### 14.2.2 Emergency plans

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(a) dangerous goods in a receptacle with a capacity of more than 500 litres; or

(b) more than 500 kilograms of dangerous goods in a receptacle;  
if a telephone advisory service is not available during the journey.

Offence provision.

(3) A person must not consign a load that contains:

(a) dangerous goods in a receptacle with a capacity of more than 500 litres; or

(b) more than 500 kilograms of dangerous goods in a receptacle;  
if a telephone advisory service is not available during the journey.

Offence provision.

{(4) An offence against subclause (2) or (3) is an offence of strict liability.}

(5) A telephone advisory service may be provided by the prime contractor, rail operator or consignor, or someone else for the prime contractor, rail operator or consignor.

#### 14.2.2 Emergency plans

(1) In this clause:

***emergency plan***, for the transport of a placard load, means a written plan, for dealing with any dangerous situation arising from the transport of the goods, that is prepared having regard to any guidelines approved by the Ministerial Council.

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

Offence provision.

(3) On becoming aware of a dangerous situation involving a placard load, the prime contractor or rail operator transporting the load must do everything that the emergency plan for the transport of the load requires the prime contractor or rail operator to do that is relevant to the situation.

Offence provision.

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

Offence provision.

(5) On becoming aware of a dangerous situation involving a placard load, the consignor of the load must do everything that the emergency plan

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14.2.3 Consignor's duties — information and resources

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for the transport of the load requires the consignor to do that is relevant to the situation.

Offence provision.

- {(6) An offence against subclause (2), (3), (4) or (5) is an offence of strict liability.}

### 14.2.3 Consignor's duties — information and resources

- (1) This clause applies if a vehicle transporting a placard load is involved in an incident resulting in a dangerous situation.
- (2) As soon as practicable after being asked by an authorised officer or an officer of an emergency service, the consignor of the goods must:
  - (a) give to the officer the information that the officer requires about:
    - (i) the properties of the dangerous goods being transported; and
    - (ii) safe methods of handling the goods; and
    - (iii) safe methods of containing and controlling the goods in a dangerous situation; and
  - (b) provide the equipment and other resources necessary:
    - (i) to control the dangerous situation; and
    - (ii) to contain, control, recover and dispose of dangerous goods that have leaked, spilled or accidentally escaped.

Offence provision.

- {(3) An offence against subclause (2) is an offence of strict liability.}
- (4) If the prime contractor and the consignor, or the rail operator and the consignor, of the dangerous goods are asked to give the same information or provide the same resources for the incident, it is sufficient if the consignor or, as the case may be, the prime contractor or the rail operator gives the information or provides the resources.

### 14.2.4 Prime contractor's and rail operator's duties — information and resources

- (1) This clause applies if a vehicle transporting a placard load is involved in an incident resulting in a dangerous situation.
- (2) As soon as practicable after being asked by an authorised officer or an officer of an emergency service, the prime contractor or rail operator must:
  - (a) give to the officer the information that the officer requires about the vehicle's construction, properties and equipment; and
  - (b) provide the equipment and other resources necessary:
    - (i) to control the dangerous situation; and

14.2.4 Prime contractor's and rail operator's duties — information and resources

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- (ii) to recover a vehicle involved in the situation or its equipment.

Offence provision.

- {(3) An offence against subclause (2) is an offence of strict liability.}
- (4) If the prime contractor and the consignor, or the rail operator and the consignor, of the dangerous goods are asked to give the same information or provide the same resources for the incident, it is sufficient if the consignor gives the information or provides the resources.

## **Part 15 Mutual recognition**

### **Division 15.1 Registers of determinations, exemptions, approvals and licences**

#### **15.1.1 Registers**

Each of the following registers is a *register* for this subordinate instrument:

- (a) the register of determinations kept under clause 1.5.6;
- (b) the register of exemptions kept under clause 16.1.2;
- (c) the register of approvals kept under clause 17.3.1;
- (d) the register of dangerous goods driver licences kept under clause 18.6.5(1);
- (e) the register of dangerous goods vehicle licences kept under clause 18.6.5(2).

#### **15.1.2 Registers may be kept by computer**

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

#### **15.1.3 Inspection of registers**

- (1) The Competent Authority must ensure that each register is available for inspection by corresponding authorities and the public.
- (2) The Competent Authority is taken to comply with subclause (1) by ensuring that there is reasonable access to:
  - (a) copies of information in a register; or
  - (b) a computer terminal to inspect a register.

### **Division 15.2 Recommendations by Competent Authority and corresponding authorities**

#### **15.2.1 Recommendations by Competent Authority**

- (1) This clause applies if the Competent Authority considers that a ground exists for a corresponding authority to do any of the following (the *proposed action*):
  - (a) revoke or vary a corresponding determination that is not a corresponding administrative determination;
  - (b) cancel or vary a corresponding administrative determination;
  - (c) cancel or vary a corresponding approval or exemption;
  - (d) cancel, suspend or vary a corresponding dangerous goods driver licence or dangerous goods vehicle licence.

#### 15.2.2 Recommendations by corresponding authorities

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- (2) The Competent Authority may recommend, in writing, that the corresponding authority take the proposed action.
- (3) The Competent Authority must provide written reasons to the corresponding authority for the recommendation.
- (4) If the recommendation is about a determination (except an administrative determination), approval or exemption that has effect in one or more other participating jurisdictions, the Competent Authority must also refer the recommendation to CAP.

### 15.2.2 Recommendations by corresponding authorities

- (1) This clause applies if a corresponding authority recommends to the Competent Authority in writing that the Competent Authority do any of the following:
  - (a) revoke or vary a determination that is not an administrative determination;
  - (b) cancel or vary an administrative determination;
  - (c) cancel or vary an approval or exemption;
  - (d) cancel, suspend or vary a dangerous goods driver licence or dangerous goods vehicle licence.
- (2) If the recommendation is about a determination (except an administrative determination), approval or exemption that has effect in one or more other participating jurisdictions, the Competent Authority need not take any action on the recommendation until CAP has considered the recommendation.
- (3) In any other case the Competent Authority must have regard to the recommendation.

## Division 15.3 Mutual recognition of determinations, exemptions, approvals and licences

### 15.3.1 Corresponding determinations

- (1) This clause applies to a determination made by a corresponding authority if:
  - (a) the determination is made under a provision of the law of the other jurisdiction corresponding to a provision (the *relevant provision*) of any of the following clauses:
    - (i) clause 1.5.1 (Determinations — dangerous goods and packaging);
    - (ii) clause 1.5.3 (Determinations — vehicles, routes, areas and times); and
  - (b) the determination has effect in the other jurisdiction; and

### 15.3.2 Corresponding exemptions

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- (c) either of the following applies:
  - (i) CAP has decided that the determination should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction and CAP has not reversed the decision;
  - (ii) the determination is an administrative determination.
- (2) The determination has effect in this jurisdiction as if it were a determination made by the Competent Authority under the relevant provision.

### 15.3.2 Corresponding exemptions

- (1) This clause applies to an exemption granted by a corresponding authority if:
  - (a) the exemption is granted for a provision of the law of the other jurisdiction corresponding to a provision (the *relevant provision*) of this subordinate instrument; and
  - (b) the exemption has effect in the other jurisdiction; and
  - (c) CAP has decided that the exemption should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction, and CAP has not reversed the decision.
- (2) The exemption has effect in this jurisdiction as if it were an exemption granted by the Competent Authority for the relevant provision for 10 years after the day on which CAP made its decision unless:
  - (a) the decision is sooner reversed by CAP; or
  - (b) the exemption is sooner cancelled or varied by the corresponding authority; or
  - (c) the exemption sooner expires or otherwise ceases to have effect.

### 15.3.3 Corresponding approvals

- (1) This clause applies to an approval given in another jurisdiction by a corresponding authority if:
  - (a) the approval is given under a provision of the law of the other jurisdiction corresponding to a provision (the *relevant provision*) of any of the following clauses:
    - (i) clause 1.3.2 (Approvals — tests and training courses for drivers);
    - (ii) clause 4.2.4 (Approval of packaging designs);
    - (iii) clause 4.2.7 (Approval of overpack preparation method);
    - (iv) clause 9.1.8 (Approvals — Type II segregation devices);
    - (v) clause 9.1.9 (Approvals — methods of segregation);
    - (vi) clause 11.2.7 (Approvals — emergency information);

#### 15.3.4 Corresponding licences

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- (vii) clause 20.1.4 (Approvals — insurance); and
  - (b) the approval has effect in the other jurisdiction; and
  - (c) CAP has decided that the approval should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction, and CAP has not reversed the decision.
- (2) The approval has effect in this jurisdiction as if it were an approval given by the Competent Authority under the relevant provision.

#### 15.3.4 Corresponding licences

- (1) This clause applies to a licence granted for road transport in another jurisdiction if:
  - (a) the licence is a licence granted under a provision of the law of the other jurisdiction corresponding to clause 18.3.5 (Grant of dangerous goods driver licences), or 18.4.4 (Grant of dangerous goods vehicle licences), (the *relevant provision*); and
  - (b) the licence has effect in the other jurisdiction.
- (2) Except for circumstances that do not exist in this jurisdiction, the licence has effect in this jurisdiction as if it were a licence granted by the Competent Authority under the relevant provision.

#### 15.3.5 Reference of determination, exemption or approval to CAP for the purposes of mutual recognition

The Competent Authority may refer to CAP any determination, exemption or approval that has been made by a corresponding authority that the Competent Authority considers to be a determination, exemption or approval that should be given effect in all participating jurisdictions, or participating jurisdictions including this jurisdiction, for the purposes of clause 15.3.1, 15.3.2 or 15.3.3.

16.1.1 Applications for exemptions

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## Part 16 Exemptions

*Note* For other provisions about exemptions, see sections 77, 78, 79 and 80 of the Act.

### Division 16.1 General

#### 16.1.1 Applications for exemptions

- (1) An application for an exemption must:
  - (a) be made in writing to the Competent Authority; and
  - (b) be signed and dated by or for the applicant; and
  - (c) state the applicant's name and address; and
  - (d) state the name of the person to whom, or the name, or a description, of the class of persons to which, the application relates; and
  - (e) specify the provisions of this subordinate instrument, and of the ADG Code, to which the application relates; and
  - (f) specify the dangerous goods to which the application relates; and
  - (g) state why, in the applicant's opinion, compliance with the provisions is not reasonably practicable; and
  - (h) state why, in the applicant's opinion, the exemption is not likely to involve a greater risk than the risk involved in complying with the provisions; and
  - (i) if the application relates to a vehicle, equipment, packaging or other thing — describe the thing; and
  - (j) state the period for which the exemption is sought; and
  - (k) state the geographical area within which the exemption is to have effect; and
  - (l) if a fee is prescribed for the application — be accompanied by the prescribed fee.
- (2) The Competent Authority may, by written notice, require the applicant to give to the Authority any additional information necessary for a proper consideration of the application.

#### 16.1.2 Register of exemptions

- (1) The Competent Authority must keep a register of exemptions.
- (2) The register may have separate divisions for different kinds of exemptions.
- (3) The Competent Authority must record in the register:
  - (a) each exemption granted by the Authority; and
  - (b) each corresponding exemption.

### 16.1.3 Records of exemptions

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- (4) The Competent Authority must note in the register:
  - (a) the cancellation or variation of an exemption granted by the Authority; and
  - (b) a decision of CAP reversing a decision that a corresponding exemption should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction.

### 16.1.3 Records of exemptions

The record of an exemption in the register must include:

- (a) the terms of the exemption; or
- (b) the following information:
  - (i) if the exemption was notified in the Government Gazette of a participating jurisdiction (including this jurisdiction) — the title of the Gazette and the date of notification;
  - (ii) the name of the person to whom, or the name, or a description, of the class of persons to which, the exemption applies;
  - (iii) the date when the exemption was granted;
  - (iv) the provisions of this subordinate instrument, and of the ADG Code, to which the exemption relates;
  - (v) the period for which the exemption has effect;
  - (vi) the dangerous goods, equipment, packaging, vehicle or other thing to which the exemption relates.

## Division 16.2 Reference of matters to CAP

### 16.2.1 References to CAP

- (1) The Competent Authority must refer an application for an exemption, or an exemption that it has granted, to CAP if the Authority considers that the exemption should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction.
- (2) The Competent Authority must refer to CAP an exemption having effect in this jurisdiction, and one or more other participating jurisdictions, if:
  - (a) the Authority considers that the exemption should be cancelled or varied; or
  - (b) a corresponding authority recommends to the Competent Authority in writing that the exemption should be cancelled or varied.

### 16.2.2 Effect of CAP decisions about exemptions

- (1) This clause applies if:
  - (a) an application for an exemption, or an exemption, is referred to CAP under clause 16.2.1(1); and

16.2.3 Effect of CAP decisions about cancelling or varying exemptions

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- (b) CAP decides:
  - (i) that the exemption should be granted, what the terms of the exemption should be, and that the exemption should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction; or
  - (ii) that the exemption should not have effect in this jurisdiction.
- (2) The Competent Authority must have regard to CAP's decision.

**16.2.3 Effect of CAP decisions about cancelling or varying exemptions**

- (1) This clause applies if:
  - (a) an exemption is referred to CAP under clause 16.2.1(2); and
  - (b) CAP decides that the exemption:
    - (i) should, or should not, be cancelled; or
    - (ii) should be varied (whether or not CAP's decision is the same as the variation proposed by the Authority), and should have effect as varied in all participating jurisdictions or participating jurisdictions including this jurisdiction; or
    - (iii) should not be varied.
- (2) The Competent Authority must have regard to CAP's decision.

## **Part 17 Administrative determinations and approvals**

*Note* For provisions about determinations generally, see Division 1.5.

### **Division 17.1 General**

#### **17.1.1 Applications**

- (1) An application for an administrative determination or approval, or for the variation of an administrative determination or approval, must:
  - (a) be made to the Competent Authority in writing; and
  - (b) if a fee is prescribed for the application — be accompanied by the prescribed fee.
- (2) An application for the variation of an administrative determination or approval must have the determination or approval with it.
- (3) The Competent Authority may, by written notice, require an applicant to give to the Authority any additional information necessary for a proper consideration of the application.

#### **17.1.2 Form of administrative determinations and approvals**

An administrative determination, or an approval given on application, must be in writing.

#### **17.1.3 When administrative determinations and approvals not to be made etc**

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

#### **17.1.4 Reasons for refusal of applications**

- (1) This clause applies if the Competent Authority refuses an application to:
  - (a) make or vary an administrative determination; or
  - (b) grant or vary an approval under this subordinate instrument.
- (2) The Competent Authority must inform the applicant in writing of the refusal and of the reasons for the refusal.

#### **17.1.5 Periods and conditions**

- (1) An administrative determination or a written approval under this subordinate instrument has effect for the period specified in the determination or approval.

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17.1.6 Replacement administrative determinations and approvals

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- (2) A condition to which an administrative determination, or a written approval, is subject must be specified in the determination or approval.

### 17.1.6 Replacement administrative determinations and approvals

The Competent Authority must issue to a person to whom an administrative determination applies, or an approval is given, a replacement determination or approval if:

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

### 17.1.7 Grounds for cancelling administrative determinations and approvals

- (1) An administrative determination or approval may be cancelled if the application for the determination or approval:
  - (a) did not comply with this subordinate instrument; or
  - (b) was false or misleading in a material respect.
- (2) An administrative determination or approval may be cancelled if:
  - (a) a relevant change has happened since the determination was made or the approval was given; and
  - (b) if the change had happened earlier:
    - (i) the determination would not have been made; or
    - (ii) the approval would not have been given.
- (3) An administrative determination or approval may be cancelled if the person on whose application the determination was made, or to whom the approval was given, is unsuitable to continue to be a person to whom the determination applies, or the approval was given, because the person has contravened:
  - (a) a provision of the Act or this subordinate instrument; or
  - (b) a provision of the law in force in another participating jurisdiction corresponding to a provision mentioned in paragraph (a).
- (4) In subclause (2):  
*relevant change* means a change about something that the Competent Authority may or must consider in deciding whether to make the determination or give the approval.

### 17.1.8 Grounds for varying administrative determinations and approvals

- (1) An administrative determination or approval may be varied if the application for the determination or approval:
  - (a) did not comply with this subordinate instrument; or

#### 17.2.1 References to CAP

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- (b) was false or misleading in a material respect.
- (2) An administrative determination or approval may be varied if:
  - (a) a relevant change has happened since the determination was made or the approval was given; and
  - (b) if the change had happened earlier:
    - (i) the determination would have been made in the way in which it is proposed to be varied; or
    - (ii) the approval would have been given in the way in which it is proposed to be varied.
- (3) An administrative determination or approval may be varied if the person on whose application the determination was made, or to whom the approval was given, is unsuitable to continue to be a person to whom the determination applies, or the approval was given, without variation because the person has contravened:
  - (a) a provision of the Act or this subordinate instrument; or
  - (b) a provision of the law in force in another participating jurisdiction corresponding to a provision mentioned in paragraph (a).
- (4) In the case of an administrative determination that applies to more than one person, the Competent Authority may vary the determination by removing the name of a person who is unsuitable as described in subclause (3), even if that person was the original applicant for the determination.
- (5) In subclause (2):  
*relevant change* means a change about something that the Competent Authority may or must consider in deciding whether to make the determination or give the approval.

## Division 17.2 Reference of determinations to CAP

### 17.2.1 References to CAP

- (1) The Competent Authority must refer an application for a determination, or a determination it has made, to CAP if the Authority considers that the determination should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction.
- (2) The Competent Authority must refer to CAP a determination having effect in this jurisdiction, and one or more other participating jurisdictions, if:
  - (a) the Authority considers that the determination should be cancelled or varied; or
  - (b) a corresponding authority recommends to the Competent Authority in writing that the determination should be cancelled or varied.

17.2.2 Effect of CAP decisions about determinations

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**17.2.2 Effect of CAP decisions about determinations**

- (1) This clause applies if:
  - (a) an application for a determination, or a determination, is referred to CAP under clause 17.2.1(1); and
  - (b) CAP decides:
    - (i) that the determination should be given, what the terms of the determination should be, and that the determination should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction; or
    - (ii) that the determination should not have effect in this jurisdiction.
- (2) The Competent Authority must have regard to CAP's decision.

**17.2.3 Effect of CAP decisions about cancelling or varying determinations**

- (1) This clause applies if:
  - (a) a determination is referred to CAP under clause 17.2.1(2); and
  - (b) CAP decides that the determination:
    - (i) should, or should not, be cancelled; or
    - (ii) should be varied (whether or not CAP's decision is the same as the variation proposed by the Authority), and should have effect as varied in all participating jurisdictions or in participating jurisdictions including this jurisdiction; or
    - (iii) should not be varied.
- (2) The Competent Authority must have regard to CAP's decision.

**Division 17.3 Register of approvals**

**17.3.1 Register**

- (1) The Competent Authority must keep a register of approvals.
- (2) The register may have separate divisions for different kinds of approvals.
- (3) The Competent Authority must record in the register:
  - (a) each approval given in writing under this subordinate instrument; and
  - (b) each corresponding approval.
- (4) The Competent Authority must note in the register:
  - (a) the cancellation or variation of a written approval; and
  - (b) a decision of CAP reversing a decision that a corresponding approval should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction.

17.3.2 Records of approvals

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### **17.3.2 Records of approvals**

The record of an approval in the register must include:

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

## **Division 17.4 Reference of approval matters to CAP**

### **17.4.1 References to CAP**

- (1) The Competent Authority must refer an application for an approval, or an approval that it has given, to CAP if the Authority considers that the approval should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction.
- (2) The Competent Authority must refer to CAP an approval having effect in this jurisdiction, and one or more other participating jurisdictions, if:
  - (a) the Authority considers that the approval should be cancelled or varied; or
  - (b) a corresponding authority recommends to the Competent Authority in writing that the approval should be cancelled or varied.

### **17.4.2 Effect of CAP decisions about approvals**

- (1) This clause applies if:
  - (a) an application for an approval, or an approval, is referred to CAP under clause 17.4.1(1); and
  - (b) CAP decides:
    - (i) that the approval should be given, what the terms of the approval should be, and that the approval should have effect in all participating jurisdictions or participating jurisdictions including this jurisdiction; or
    - (ii) that the approval should not have effect in this jurisdiction.
- (2) The Competent Authority must have regard to CAP's decision.

### **17.4.3 Effect of CAP decisions about cancelling or varying approvals**

- (1) This clause applies if:
  - (a) an approval is referred to CAP under clause 17.4.1(2); and

17.5.1 Cancellation and variation in dangerous situations

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- (b) CAP decides that the approval:
  - (i) should, or should not, be cancelled; or
  - (ii) should be varied (whether or not CAP's decision is the same as the variation proposed by the Authority), and should have effect as varied in all participating jurisdictions or in participating jurisdictions including this jurisdiction; or
  - (iii) should not be varied.
- (2) The Competent Authority must have regard to CAP's decision.

## **Division 17.5 Cancellation and variation**

### **17.5.1 Cancellation and variation in dangerous situations**

The Competent Authority must cancel or vary an administrative determination or an approval if the Competent Authority reasonably believes that:

- (a) a ground exists to cancel or vary the administrative determination or approval; and
- (b) it is necessary to do so to avoid, eliminate or minimise a dangerous situation.

### **17.5.2 Cancellation giving effect to court orders**

- (1) The Competent Authority must cancel an administrative determination or an approval if the person to whom the determination or approval applies is prohibited by a court order from involvement in the transport of dangerous goods.
- (2) If an approval applies to more than one person, subclause (1) only requires the Competent Authority to ensure that the approval no longer applies to the person who is the subject of the prohibition.

### **17.5.3 Variation of administrative determinations and approvals on application**

- (1) This clause applies if:
  - (a) an application is made to vary an administrative determination or an approval; and
  - (b) the application is made in accordance with clause 17.1.1 by the person to whom the determination applies or to whom the approval is given.
- (2) The Competent Authority may vary the determination or approval in accordance with the application.

17.5.4 Cancellation and variation in other circumstances

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### 17.5.4 Cancellation and variation in other circumstances

- (1) This clause applies if:
  - (a) the Competent Authority considers that a ground exists to cancel or vary an administrative determination or an approval (the *proposed action*); and
  - (b) clauses 17.5.1, 17.5.2 and 17.5.3 do not apply to the proposed action.
- (2) The Competent Authority must give to the person to whom the determination applies or the approval was given a written notice that:
  - (a) states what the proposed action is; and
  - (b) if the proposed action is to vary the determination or approval — sets out the proposed variation; and
  - (c) sets out the ground for the proposed action; and
  - (d) outlines the facts and other circumstances forming the basis for the ground; and
  - (e) invites the person to state in writing, within a specified period of at least 28 days after the day when the notice is given to the person, why the proposed action should not be taken.
- (3) If, after considering any written statement made within the specified period, the Competent Authority reasonably believes that a ground exists to take the proposed action, the Authority may:
  - (a) cancel or vary the determination or approval; or
  - (b) if the proposed action is to vary the determination or approval in a specified way — vary the determination or approval in that way.

### 17.5.5 When cancellation and variation take effect

The cancellation or variation of an administrative determination or an approval by the Competent Authority takes effect on:

- (a) the day when the person to whom the determination applies or the approval was given is given written notice by the Authority of the cancellation or variation and of the reasons for the cancellation or variation; or
- (b) a later day specified in the notice.

## **Part 18 Licences**

### **Division 18.1 Preliminary**

#### **18.1.1 Meaning of *licensing authority***

In this Part:

*licensing authority* means:

- (a) the Competent Authority for road transport; or
- (b) a person or body authorised by the Competent Authority to issue licences under this Part.

#### **18.1.2 Application of Part**

Despite anything to the contrary in this Part, this Part does not apply to the transport by road of dangerous goods on a vehicle if:

- (a) the goods are transported in an IBC; and
- (b) the IBC is not packed or unpacked on the vehicle; and
- (c) the total capacity of IBCs containing dangerous goods on the vehicle is not more than 3 000 litres.

#### **18.1.3 Part additional to other laws**

This Part is in addition to any other law in force in this jurisdiction about:

- (a) the licensing of drivers; or
- (b) the employment or engaging of drivers; or
- (c) the registration of vehicles; or
- (d) the transport of goods by road.

### **Division 18.2 Vehicles and drivers to be licensed under this Part**

#### **18.2.1 Vehicles to be licensed**

- (1) A road vehicle must not be used to transport:
  - (a) dangerous goods in a receptacle with a capacity of more than 500 litres; or
  - (b) more than 500 kilograms of dangerous goods in a receptacle;unless the vehicle is licensed under this Part to transport the goods.
- (2) If the Competent Authority has determined under clause 1.5.3 that a vehicle that is not licensed under this Part may be used to transport

18.2.2 Drivers to be licensed

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the dangerous goods described in subclause (1), the vehicle may be used to transport the goods without complying with that subclause.

## **18.2.2 Drivers to be licensed**

A person must not drive a road vehicle transporting:

- (a) dangerous goods in a receptacle with a capacity of more than 500 litres; or
- (b) more than 500 kilograms of dangerous goods in a receptacle;

unless he or she holds a dangerous goods driver licence that authorises him or her to drive the vehicle with those goods.

## **Division 18.3 Dangerous goods driver licences**

### **18.3.1 Applications for licences**

- (1) A person resident in this jurisdiction who is not the holder of a dangerous goods driver licence or a corresponding dangerous goods driver licence may apply to the licensing authority for a dangerous goods driver licence if the person holds a driver licence.
- (2) The application must be accompanied by:
  - (a) the driver licence evidence required by clause 18.3.2; and
  - (b) the competency evidence required by clause 18.3.3; and
  - (c) the medical fitness evidence required by clause 18.3.4; and
  - (d) 2 of a size suitable for passports photographs of the applicant that were taken not more than 6 months before the day when the application is made; and
  - (e) if a fee is prescribed for the application — the prescribed fee.

### **18.3.2 Required driver licence evidence**

- (1) The following documents are required as driver licence evidence for an application for the grant or renewal of a dangerous goods driver licence:
  - (a) a current certified extract of entries about the applicant in the driving licences register kept by the driver licensing authority in each jurisdiction where the applicant has held a licence to drive; and
  - (b) either:
    - (i) the document mentioned in subclause (2); or
    - (ii) the authorisation mentioned in subclause (3).

### 18.3.3 Required competency evidence

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- (2) For subclause (1)(b)(i), the document is a copy, certified by the appropriate authority of the jurisdiction where the applicant was convicted, of the records of any conviction of the applicant for a driving offence.
- (3) For subclause (1)(b)(ii), the authorisation is the authorisation by the applicant for the licensing authority to have access to:
  - (a) entries about the applicant in the driving licences register of any State or Territory; and
  - (b) records of any conviction of the applicant for a driving offence in any State or Territory.
- (4) For subclause (1)(a), a current certified extract is an extract certified by the driver licensing authority not more than 6 months before the day when the application is made.

### 18.3.3 Required competency evidence

- (1) A document mentioned in subclause (2) is required as competency evidence for an application for grant or renewal of a dangerous goods driver licence.
- (2) The document must be either:
  - (a) a certificate issued, not more than 6 months before the day when the application is made, by a person who conducted an approved test or approved training course stating that the applicant passed the test or completed the course; or
  - (b) other written evidence that the applicant passed an approved test or completed an approved training course not more than 6 months before the day when the application is made.

### 18.3.4 Required medical fitness evidence

- (1) The certificate mentioned in subclause (2) is required as medical fitness evidence for an application for the grant or renewal of a dangerous goods driver licence.
- (2) The certificate must be:
  - (a) about the medical fitness of the applicant to drive a road vehicle; and
  - (b) issued by a registered medical practitioner who, not more than 6 months before the day when the application is made, examined and passed the applicant in accordance with the standards in *Assessing Fitness to Drive for Commercial and Private Vehicle Drivers — Medical Standards for Licensing and Clinical Management Guidelines* published by Austroads and the National Road Transport Commission, as in force at the time of the examination.

18.3.5 Grant of dangerous goods driver licences

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**18.3.5 Grant of dangerous goods driver licences**

- (1) The licensing authority must grant a dangerous goods driver licence if:
  - (a) an application is made to the authority for the licence; and
  - (b) the application is accompanied by the documents required by clause 18.3.1 and otherwise complies with the clause.
- (2) However, the licensing authority must not grant the licence if:
  - (a) in the 5 years before the day when the application is made:
    - (i) the applicant has been found guilty by a court in Australia of an offence that makes the applicant unsuitable to be the driver of a vehicle transporting dangerous goods; or
    - (ii) the applicant's driver licence has been cancelled or suspended on a ground that makes the applicant unsuitable to be the driver of a vehicle transporting dangerous goods; or
  - (b) the applicant is subject to a court order prohibiting the applicant from involvement in the transport of dangerous goods by road.
- (3) If the licensing authority refuses to grant a dangerous goods driver licence, it must inform the applicant in writing of the refusal and of the reasons for the refusal.

**18.3.6 Applications for renewal of licences**

- (1) A person who holds a dangerous goods driver licence may apply to the licensing authority for the renewal of the licence.
- (2) The application must be accompanied by:
  - (a) the driver licence evidence required by clause 18.3.2; and
  - (b) the competency evidence required by clause 18.3.3; and
  - (c) the medical fitness evidence required by clause 18.3.4; and
  - (d) 2 photographs of the applicant of a size suitable for passports that were taken not more than 6 months before the day when the application is made; and
  - (e) if a fee is prescribed for the application — the prescribed fee.

**18.3.7 Renewal of licences**

- (1) The licensing authority must renew a dangerous goods driver licence if:
  - (a) an application is made to it for renewal of the licence; and
  - (b) the application is accompanied by the documents required by clause 18.3.6 and otherwise complies with the clause.

#### 18.3.8 Licence periods

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- (2) However, the licensing authority must not renew the licence if:
  - (a) while the licence had effect:
    - (i) the applicant was found guilty by a court in Australia of an offence that makes the applicant unsuitable to be the driver of a vehicle transporting dangerous goods; or
    - (ii) the applicant's driver licence has been cancelled or suspended on a ground that makes the applicant unsuitable to be the driver of a vehicle transporting dangerous goods; or
  - (b) the applicant is subject to a court order prohibiting the applicant from involvement in the transport of dangerous goods by road.
- (3) If the licensing authority refuses to renew a dangerous goods driver licence, it must inform the applicant in writing of the refusal and of the reasons for the refusal.

#### **18.3.8 Licence periods**

- (1) A dangerous goods driver licence is granted for the period specified in the licence, being a period not longer than 5 years.
- (2) A dangerous goods driver licence takes effect on the day when the licence is granted or a later day specified in the licence.
- (3) A dangerous goods driver licence is renewed for the period specified in the renewed licence, being a period not longer than 5 years.

#### **18.3.9 Licence conditions**

- (1) The licensing authority may grant or renew a dangerous goods driver licence subject to conditions mentioned in subclauses (3) and (4).
- (2) A condition to which the licence is subject must be stated in the licence.
- (3) The licence may be subject to conditions about:
  - (a) the dangerous goods that may or may not be transported in or on a road vehicle driven by the licensee; and
  - (b) the packaging that may or may not be used to transport dangerous goods in or on a road vehicle driven by the licensee; and
  - (c) the road vehicles that may be driven by the licensee in transporting dangerous goods; and
  - (d) the areas where the licensee may or may not drive a road vehicle transporting dangerous goods or particular dangerous goods; and
  - (e) the supervision of the licensee when driving a road vehicle transporting dangerous goods.
- (4) The licence may be subject to any other condition necessary for the safe transport of dangerous goods by road.

18.3.10 Additional condition

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**18.3.10 Additional condition**

- (1) It is a condition of a dangerous goods driver licence that the licensing authority may, by written notice given to the licensee, require the licensee to produce to the authority a certificate:
  - (a) about the medical fitness of the licensee to drive a road vehicle; and
  - (b) issued by a registered medical practitioner who, not more than 6 months before the day when the certificate is given to the authority, examined and passed the licensee in accordance with the standards in *Assessing Fitness to Drive for Commercial and Private Vehicle Drivers — Medical Standards for Licensing and Clinical Management Guidelines* published by Austroads and the National Road Transport Commission, as in force at the time of the examination.
- (2) The written notice must specify a period of at least 2 months after the day when the notice is received by the licensee within which the licensee must produce the certificate.
- (3) The licensing authority must not give written notice under this clause if the period of validity of the dangerous goods driver licence is less than 4 months.

**18.3.11 Grounds for cancelling, suspending or varying licences**

- (1) A dangerous goods driver licence may be cancelled, suspended or varied if the application for the licence or an application for its renewal:
  - (a) did not comply with this subordinate instrument; or
  - (b) was false or misleading in a material respect.
- (2) A dangerous goods driver licence may be cancelled or varied if the licensee is unsuitable to continue to be the driver of a road vehicle transporting dangerous goods because:
  - (a) the licensee has contravened:
    - (i) a provision of the Act or this subordinate instrument; or
    - (ii) a provision of the law in force in another participating jurisdiction corresponding to a provision mentioned in subparagraph (i); or
  - (b) the licensee has been found guilty by a court in Australia of an offence; or
  - (c) the licensee's driver licence is cancelled; or
  - (d) the licensee is suffering from a medical condition, or has a physical or mental disability.

18.4.1 Meaning of vehicle

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## Division 18.4 Dangerous goods vehicle licences

### 18.4.1 Meaning of vehicle

In this Division:

**vehicle** does not include:

- (a) a prime mover; or
- (b) a converter dolly (within the meaning of the *Australian Light Vehicle Standards Rules 2015*).

*Note* Those Rules define a converter dolly as a trailer with 1 axle group or single axle and a fifth wheel coupling, designed to convert a semi-trailer into a dog trailer.

[*Drafting note:* The *Australian Light Vehicle Standards Rules 2015* are published by the Australasian Parliamentary Counsel's Committee and can be found at [http://www.pcc.gov.au/uniform\\_legislation\\_official\\_versions.html](http://www.pcc.gov.au/uniform_legislation_official_versions.html). As each jurisdiction has enacted the Vehicle Standards in its own legislation, local variations will apply to this reference.]

### 18.4.2 Applications for licences

- (1) A person may apply to the licensing authority for a dangerous goods vehicle licence for a road vehicle:
  - (a) used, or intended to be used, in transporting dangerous goods; and
  - (b) for which the person does not hold a dangerous goods vehicle licence.
- (2) The application must include the following information:
  - (a) the registration number, make and type of the road vehicle;
  - (b) the type of dangerous goods intended to be transported in or on the road vehicle;
  - (c) if the applicant holds a dangerous goods vehicle licence for another vehicle — the number of the other dangerous goods vehicle licence.
- (3) If a fee is prescribed for the application, the application must be accompanied by the prescribed fee.
- (4) An application may be made for licences for 2 or more road vehicles in the same form.

### 18.4.3 Additional information and inspections

- (1) The licensing authority may, by written notice, require an applicant for a dangerous goods vehicle licence, or for the renewal of a dangerous goods vehicle licence, for a vehicle:
  - (a) to give to the authority, or to someone nominated by the authority, any additional information necessary for a proper consideration of the application; and
  - (b) to make the vehicle available for inspection by the authority, or by someone nominated by the authority, at a specified place and time.

#### 18.4.4 Grant of dangerous goods vehicle licences

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- (2) A person who inspects a vehicle for the licensing authority must give a report of the inspection to the authority as soon as practicable after the inspection.
- (3) The licensing authority must give a copy of any report of an inspection to the applicant if the applicant asks for it.

#### **18.4.4 Grant of dangerous goods vehicle licences**

- (1) Subject to subclause (4), the licensing authority must grant a dangerous goods vehicle licence for a road vehicle if:
  - (a) an application is made to the authority for the licence; and
  - (b) the application complies with clause 18.4.2; and
  - (c) the applicant has complied with any requirement made under clause 18.4.3 in relation to the application; and
  - (d) the road vehicle is suitable to transport each type of dangerous goods intended to be transported in or on the road vehicle.
- (2) Without limiting subclause (1)(d), if a road vehicle is intended for use in the transport of dangerous goods in the form of a liquid or gas using a tank that will form part of the vehicle or be attached to it, the vehicle is suitable only if:
  - (a) the tank is an approved tank; and
  - (b) the vehicle complies with the requirements of Chapters 4.4 and 6.10 of the ADG Code applying to road vehicles for use in transporting dangerous goods in the form of a liquid or gas.
- (3) However, the licensing authority must not grant the licence if the applicant is subject to a court order prohibiting the applicant from involvement in the transport of dangerous goods by road.
- (4) The licensing authority may issue a single dangerous goods vehicle licence for more than one road vehicle.
- (5) If the licensing authority refuses to grant a dangerous goods vehicle licence, the authority must inform the applicant in writing of the refusal and of the reasons for the refusal.

#### **18.4.5 Applications for renewal of licences**

- (1) A person who holds a dangerous goods vehicle licence for a road vehicle may apply to the licensing authority for the renewal of the licence.
- (2) The application must include the information required under clause 18.4.2(2) for an application for the grant of a dangerous goods vehicle licence for the road vehicle.
- (3) If a fee is prescribed for the application, the application must be accompanied by the prescribed fee.

18.4.6 Renewal of licences

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**18.4.6 Renewal of licences**

- (1) Subject to subclause (4), the licensing authority must renew a dangerous goods vehicle licence for a road vehicle if:
  - (a) an application is made to the authority for the renewal of the licence; and
  - (b) the application complies with clause 18.4.5; and
  - (c) the applicant has complied with any requirement made under clause 18.4.3 in relation to the application; and
  - (d) the road vehicle is suitable to transport each type of dangerous goods intended to be transported in or on the road vehicle.
- (2) Without limiting subclause (1)(d), if a road vehicle is intended for use in the transport of dangerous goods in the form of a liquid or gas using a tank that will form part of the vehicle or be attached to it, the vehicle is suitable only if:
  - (a) the tank is an approved tank; and
  - (b) the vehicle complies with the requirements of Chapters 4.4 and 6.10 of the ADG Code applying to road vehicles for use in transporting dangerous goods in the form of a liquid or gas.
- (3) However, the licensing authority must not renew the licence if the applicant is subject to a court order prohibiting the applicant from involvement in the transport of dangerous goods by road.
- (4) The licensing authority may issue a single dangerous goods vehicle licence for more than one road vehicle.
- (5) If the licensing authority refuses to renew a dangerous goods vehicle licence, the authority must inform the applicant in writing of the refusal and of the reasons for the refusal.

**18.4.7 Licence periods**

- (1) A dangerous goods vehicle licence is granted for the period specified in the licence, being a period not longer than 5 years.
- (2) A dangerous goods vehicle licence takes effect on the day when the licence is granted or a later day specified in the licence.
- (3) A dangerous goods vehicle licence is renewed for the period specified in the renewed licence, being a period not longer than 5 years.

**18.4.8 Licence conditions**

- (1) The licensing authority may grant or renew a dangerous goods vehicle licence subject to conditions mentioned in subclauses (3) and (4).
- (2) A condition to which the licence is subject must be stated in the licence.

#### 18.4.9 Disposal and transfer of licensed vehicles

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- (3) The licence may be subject to conditions about:
  - (a) the dangerous goods that may or may not be transported in or on the vehicle; and
  - (b) the areas where the vehicle may or may not be used to transport dangerous goods or particular dangerous goods; and
  - (c) the inspections of the vehicle (if any) that are required.
- (4) The licence may be subject to any other condition necessary for the safe transport of dangerous goods by road.

#### **18.4.9 Disposal and transfer of licensed vehicles**

- (1) Within the 21 days after transferring possession or otherwise disposing of a licensed vehicle (otherwise than by way of a business transfer) (the *disposed vehicle*), the person who holds the licence for the vehicle must give, to the licensing authority, notice of the disposal.

Offence provision.

- (2) If the licence for the disposed vehicle also relates to another vehicle, the person who holds the licence for the vehicle must attach the licence to the notice of the disposal.

Offence provision.

- (3) If the licence for the vehicle does not relate to another vehicle, the person who holds the licence must:
  - (a) attach it to the notice of the disposal; or
  - (b) destroy it, and, if required by the licensing authority, provide sufficient evidence to show that this has been done.

Offence provision.

- (4) On receipt of a licence for a disposed vehicle, the licensing authority must:
  - (a) if the licence also relates to another vehicle:
    - (i) amend the licence by omitting reference to the disposed vehicle; and
    - (ii) return the licence to the person who gave the licence to the authority; or
  - (b) if paragraph (a) does not apply — cancel the licence.

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18.4.10 Grounds for cancelling, suspending or varying licences

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- (5) Within the 21 days after the transfer by business transfer of a vehicle for which a dangerous goods vehicle licence has been granted, the person to whom the vehicle has been transferred must make an application to the licensing authority, accompanied by the licence and the prescribed fee, for the transfer of the licence to that person.

Offence provision.

- (6) On receipt of the application, licence and prescribed fee, the licensing authority must amend the licence to record the change in who holds the licence and return the licence.
- (7) Subclause (6) does not apply if the person to whom the licence was to have been transferred is ineligible to hold the licence.

- (8) In this clause:

*business transfer*, in respect of a vehicle, means a transfer of the title to the vehicle as part of a transfer in ownership of the business in which the vehicle is used and is to continue to be used.

- {(9) An offence against subclause (1), (2), (3) or (5) is an offence of strict liability.}

#### **18.4.10 Grounds for cancelling, suspending or varying licences**

- (1) A dangerous goods vehicle licence may be cancelled, suspended or varied if the application for the licence or an application for its renewal:
- (a) did not comply with this subordinate instrument; or
  - (b) was false or misleading in a material respect.
- (2) A dangerous goods vehicle licence for a road vehicle may be cancelled, suspended or varied if the road vehicle does not comply with the Act or this subordinate instrument.

### **Division 18.5 Requirements relating to dangerous goods driver licences**

#### **18.5.1 Licences to be carried**

- (1) The holder of a dangerous goods driver licence must carry his or her dangerous goods driver licence when driving a road vehicle transporting:
- (a) dangerous goods in a receptacle with a capacity of more than 500 litres; or

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18.6.1 Meaning of licence and licensee

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(b) more than 500 kilograms of dangerous goods in a receptacle.

Offence provision.

{(2) An offence against subclause (1) is an offence of strict liability.}

## **Division 18.6 Licences generally**

### **18.6.1 Meaning of *licence* and *licensee***

In this Division:

*licence* means a dangerous goods driver licence or dangerous goods vehicle licence.

*licensee* means the holder of a licence.

### **18.6.2 Replacement licences**

- (1) The licensing authority may issue a replacement licence to a licensee if:
  - (a) the licence is renewed; or
  - (b) the licence is varied; or
  - (c) a period of suspension of the licence ends or a suspension is withdrawn.
- (2) The licensing authority must issue a replacement licence to a licensee if the authority is satisfied that the licence has been defaced, destroyed, lost or stolen.

### **18.6.3 Failure to comply with licence conditions**

- (1) A licensee must not contravene a condition of his or her licence.

Offence provision.
- {(2) An offence against subclause (1) is an offence of strict liability.}

### **18.6.4 Surrender of licences**

- (1) A licensee may surrender his or her licence by giving notice of surrender to the licensing authority and returning the licence to the authority.
- (2) A licence ceases to have effect on its surrender.

### **18.6.5 Registers of licences**

- (1) The licensing authority must keep a register of dangerous goods driver licences.
- (2) The licensing authority must keep a register of dangerous goods vehicle licences.
- (3) A register may have separate divisions for different kinds of licences.

18.6.6 Records of licences

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- (4) The licensing authority must record each licence granted under this subordinate instrument in the appropriate register.
- (5) The licensing authority must note in the register the cancellation, surrender, suspension or variation of a licence.

**18.6.6 Records of licences**

The record of a licence in the register must include the following information:

- (a) the name of the licensee;
- (b) the date when the licence was granted or renewed;
- (c) either:
  - (i) the period for which the licence was granted or renewed; or
  - (ii) the expiry date of the licence;
- (d) for a dangerous goods driver licence — the licensee's date of birth;
- (e) for a dangerous goods vehicle licence — the registration number, make and type of each road vehicle to which the licence relates;
- (f) the classes of dangerous goods for which the licence is valid;
- (g) any condition to which the licence is subject.

**18.6.7 Change of information given in licence applications**

- (1) This clause applies if a licensee becomes aware that information given by the licensee to the licensing authority in, or in relation to, an application for the grant or renewal of a licence is or has become incorrect in a material respect.
- (2) Within 14 days after becoming aware of the matter, the licensee must inform the licensing authority about the matter and give the correct information to the authority.

Offence provision.

- {(3) An offence against subclause (2) is an offence of strict liability.}

**18.6.8 Production of licences to licensing authority**

- (1) The licensing authority may, by written notice, require a person to whom a licence has been granted to produce the licence to the authority.
- (2) The person must produce the licence to the licensing authority within 14 days after the day when the notice is given to the person.

Offence provision.

- {(3) An offence against subclause (2) is an offence of strict liability.}

18.6.9 Return of licences

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### 18.6.9 Return of licences

- (1) This clause applies if a licence is produced to the licensing authority or given to the authority by an authorised officer.
- (2) If the licence has not been cancelled or varied, and is not suspended, the licensing authority must return the licence after inspecting it.
- (3) If the licence has been suspended, the suspension has ended and a replacement licence is not issued, the licensing authority must return the licence to the licensee.
- (4) If the licence has been varied, the variation is recorded on the licence and a replacement licence is not issued, the licensing authority must return the licence to the licensee.
- (5) However, if the licence period has ended, the licensing authority is not required to return the licence to the licensee.

## Division 18.7 Cancellation, suspension and variation

### 18.7.1 Definitions

In this Division:

*licence* means a dangerous goods driver licence or dangerous goods vehicle licence.

*licensee* means the holder of a licence.

### 18.7.2 Cancellation, suspension and variation in dangerous situations

The licensing authority must cancel, suspend or vary any licence granted by it if it reasonably believes that:

- (a) a ground exists to cancel, suspend or vary the licence; and
- (b) it is necessary to do so to avoid, eliminate or minimise a dangerous situation.

### 18.7.3 Cancellation and suspension giving effect to court orders

The licensing authority must cancel or suspend a licence if the licensee is prohibited by a court order from involvement in the transport of dangerous goods by road.

### 18.7.4 Variation of licence on application

- (1) This clause applies if:
  - (a) an application is made to vary a licence; and
  - (b) the application is made by the licensee and has the licence with it.

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18.7.5 Cancellation, suspension and variation in other circumstances

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- (2) The licensing authority may vary the licence in accordance with the application.

### **18.7.5 Cancellation, suspension and variation in other circumstances**

- (1) This clause applies if:
  - (a) the licensing authority considers that a ground exists to cancel, suspend or vary a licence (the *proposed action*); and
  - (b) clauses 18.7.2, 18.7.3 and 18.7.4 do not apply to the proposed action.
- (2) The licensing authority must give to the licensee a written notice that:
  - (a) states what the proposed action is; and
  - (b) if the proposed action is to suspend the licence — states what the proposed suspension period is; and
  - (c) if the proposed action is to vary the licence — sets out the proposed variation; and
  - (d) sets out the ground for the proposed action; and
  - (e) outlines the facts and other circumstances forming the basis for the ground; and
  - (f) invites the licensee to state in writing, within a specified period of at least 28 days after the day when the notice is given to the licensee, why the proposed action should not be taken.
- (3) If, after considering any written statement made within the specified period, the licensing authority reasonably believes that a ground exists to take the proposed action, the licensing authority may:
  - (a) cancel or vary the licence; or
  - (b) suspend the licence for a period not longer than 12 months (except if the suspension is to give effect to a court order specifying a longer period of suspension); or (new, from 19.1.5(2))
  - (c) if the proposed action is to vary the licence in a specified way — vary the licence in that way.
- (4) The licensing authority may withdraw a suspension before the suspension is due to expire if it reasonably believes that it is appropriate to do so.

### **18.7.6 When cancellation, suspension and variation take effect**

The cancellation, suspension or variation of a licence by the licensing authority takes effect on:

- (a) the day when the licensee is given written notice by the licensing authority of the cancellation, suspension or variation and of the reasons for the cancellation, suspension or variation; or
- (b) a later day specified in the notice.

18.7.7 When licences taken to be suspended

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**18.7.7 When licences taken to be suspended**

- (1) A person's dangerous goods driver licence is taken to be suspended if the person's driver licence has no effect.
- (2) A person's dangerous goods vehicle licence for a road vehicle is taken to be suspended in relation to the road vehicle if the road vehicle is not registered.

## **Part 19 Reconsideration and review of decisions**

### **19.1.1 Application of Part**

This Part applies to the following decisions made by the Competent Authority:

- (a) a decision, under Part 4 of the Act, to refuse to grant an exemption, to cancel an exemption, to impose a new condition or to vary or cancel a condition of an exemption;
- (b) a decision under Part 6 of the Act to issue an improvement notice under section 85 of the Act, or to amend an improvement notice under section 87 of the Act;
- (c) a decision under Part 10 of the Act to issue a prohibition notice under section 133 of the Act, or to amend a prohibition notice under section 138 of the Act;
- (d) a decision, under clause 1.3.2, to approve or not approve a test or training course for drivers of road vehicles transporting dangerous goods;
- (e) an administrative determination under clause 1.5.1 or 1.5.3;
- (f) a decision, under clause 4.2.4, to approve or not approve a design for a packaging;
- (g) a decision, under clause 4.2.7, to approve or not approve a method of preparing an overpack;
- (h) a decision, under clause 9.1.8, to approve or not approve a design for a segregation device;
- (i) a decision, under clause 9.1.9, to approve or not approve a method of segregation;
- (j) a decision, under clause 11.2.7, to approve or not approve emergency information;
- (k) a decision, under clause 17.5.1, 17.5.3 or 17.5.4, to cancel, vary or refuse to vary a determination or approval;
- (l) a decision, under clause 18.3.5 or 18.4.4, to grant or refuse to grant a licence;
- (m) a decision, under clause 18.3.7 or 18.4.6, to renew or refuse to renew a licence;
- (n) a decision, under clause 18.6.2, to issue or refuse to issue a replacement licence;
- (o) a decision, under clause 18.7.2, 18.7.4 or 18.7.5, to cancel, suspend, vary or refuse to vary a licence;
- (p) a decision, under clause 20.1.4, to approve or not approve the use of a vehicle that is not covered by a policy of insurance or other form of indemnity.

### **19.1.2 Who may apply for reconsideration of decisions**

A person whose interests are affected by a decision may apply in writing to the Competent Authority for reconsideration of the decision.

19.1.3 Applications for reconsideration

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**19.1.3 Applications for reconsideration**

- (1) An application must be made within:
  - (a) 28 days after the day when the person was informed of the decision by the Competent Authority; or
  - (b) a longer period allowed by the Authority, either before or after the end of the 28 days.
- (2) The application must set out the grounds on which reconsideration of the decision is sought.

**19.1.4 Competent Authority to reconsider decisions**

- (1) Within 28 days after receiving the application, the Competent Authority must reconsider the decision, and confirm, revoke or vary the decision.
- (2) The Competent Authority must inform the applicant in writing of the result of the reconsideration and of the reasons for the result.

**19.1.5 Review of certain decisions**

Application may be made {to the appropriate administrative review body of the adopting State or Territory} for review of a decision by the Competent Authority under clause 19.1.4.

## **Part 20 Insurance**

### **20.1.1 Owner's duties**

- (1) The owner of a road vehicle must not use the vehicle, or permit it to be used, to transport a placard load unless:
  - (a) the use of the vehicle is covered by a policy of insurance or other form of indemnity, for a sum that is not less than \$5 000 000, in respect of:
    - (i) personal injury, death, property damage and other damage (except consequential economic loss) arising out of any fire, explosion, leakage or spillage of dangerous goods in, on or from the vehicle or any packaging transported in or on the vehicle; and
    - (ii) costs incurred by or on behalf of a Commonwealth, State or Territory government authority in a clean-up resulting from such a fire, explosion, leakage or spillage; or
  - (b) the owner has an approval under clause 20.1.4 in relation to the use of the vehicle and is complying with all relevant conditions to which the approval is subject.

Offence provision.

- (2) Each load bearing vehicle, whether or not a motor vehicle and whether or not it is being used in combination with another vehicle, is a vehicle for the purposes of subclause (1).

*Note* Under clause 1.2.1, *vehicle* is defined as including a combination. It is not the purpose of this subclause to require insurance in respect of each individual component of a combination being used in a combination. In the case of a combination, subclause (1) only requires that there be insurance for the combination as a whole.

- {(3) An offence against subclause (1) is an offence of strict liability.}

### **20.1.2 Prime contractor's duties**

- (1) A prime contractor must not use a road vehicle to transport a placard load unless:
  - (a) the use of the vehicle is covered by a policy of insurance or other form of indemnity, for a sum that is not less than \$5 000 000, in respect of:

20.1.3 Requiring evidence of insurance etc

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- (i) personal injury, death, property damage and other damage (except consequential economic loss) arising out of any fire, explosion, leakage or spillage of dangerous goods in, on or from the vehicle or any packaging transported in or on the vehicle; and
  - (ii) costs incurred by or on behalf of a Commonwealth, State or Territory government authority in a clean-up resulting from such a fire, explosion, leakage or spillage; or
- (b) the prime contractor has an approval under clause 20.1.4 in relation to the use of the vehicle and is complying with all relevant conditions to which the approval is subject.

Offence provision.

- (2) Each load bearing vehicle, whether or not a motor vehicle and whether or not it is being used in combination with another vehicle, is a vehicle for the purposes of subclause (1).

*Note* Under clause 1.2.1, *vehicle* is defined as including a combination. It is not the purpose of this subclause to require insurance in respect of each individual component of a combination being used in a combination. In the case of a combination, subclause (1) only requires that there be insurance for the combination as a whole.

- {(3) An offence against subclause (1) is an offence of strict liability.}

**20.1.3 Requiring evidence of insurance etc**

- (1) The Competent Authority may, by written notice, require the owner of a road vehicle used to transport a placard load, or a prime contractor responsible for the condition of the vehicle, to produce:
- (a) written evidence that the vehicle is covered by a policy of insurance or other form of indemnity in accordance with clause 20.1.1(1)(a) or 20.1.2(1)(a); or
  - (b) an approval under clause 20.1.4 in relation to the vehicle.
- (2) The owner or prime contractor must produce the evidence or approval to the Competent Authority within 14 days after the day when the notice is given to the person.

Offence provision.

- {(3) An offence against subclause (2) is an offence of strict liability.}

**20.1.4 Approvals — insurance**

- (1) The owner of a road vehicle used to transport placard loads, or a prime contractor responsible for the condition of the vehicle, may make an application in accordance with clause 17.1.1 to use the vehicle even if the vehicle is not covered by a policy of insurance or other form of indemnity in accordance with clause 20.1.1(1)(a) or 20.1.2(1)(a).

20.1.4 Approvals — insurance

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- (2) If the Competent Authority is satisfied that the owner or prime contractor is adequately capable of self-insurance for the purposes of clause 20.1.1(1)(a) or 20.1.2(1)(a), the Competent Authority may give written approval for the use of the vehicle.
- (3) An approval under subclause (2) may be given by the Competent Authority:
  - (a) for a single use or for a period not longer than 5 years; and
  - (b) subject to any other condition.

## Part 21 Infringement notices

### 21.1.1 Meaning of *infringement penalty*

In this Part:

*infringement penalty* has the same meaning as in section 92 of the Act.

*Note 1* Section 92(4) of the Act defines *infringement penalty* as the monetary penalty that a person who is served with an infringement notice may, as an alternative to having the matter dealt with by a court, pay to dispose of the matter.

*Note 2* The infringement penalty for infringement notice offences under the Act may be found in the second column of Schedule 1 to the Act and the infringement penalty for infringement notice offences under this subordinate instrument may be found in the second column of Schedule 1.

### 21.1.2 Infringement notice offences

For section 92 of the Act, each offence set out in Schedule 1 is declared to be an infringement notice offence.

### 21.1.3 Time for payment of infringement penalty

The time within which the infringement penalty must be paid is:

- (a) 28 days after the day when the notice is served on the person; or
- (b) if a reminder notice is given to the person — 28 days after the reminder notice is served on the person; or
- (c) a longer time that may be allowed in writing by the authorised officer.

### 21.1.4 Contents of infringement notices

An infringement notice served by an authorised officer on a person for an offence must:

- (a) be identified by a unique number; and
- (b) specify the date of service of the notice; and
- (c) specify the full name, or surname and initials, and address of the person; and
- (d) give brief details of the offence, including:
  - (i) the date and approximate time of the offence; and
  - (ii) where the offence happened; and
  - (iii) the provision of the Act or this subordinate instrument contravened; and
- (e) specify the infringement penalty for the offence payable under the notice; and
- (f) specify the place where, and any method by which, the infringement penalty may be paid; and
- (g) specify the Competent Authority's name and address; and
- (h) contain the additional information required by clause 21.1.5; and

21.1.5 Additional information in infringement notices

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- (i) be signed by the authorised officer.

### **21.1.5 Additional information in infringement notices**

The infringement notice must inform the person that:

- (a) the person may pay the infringement penalty specified in the notice:
  - (i) by posting or delivering the payment to the place of payment specified in the notice; or
  - (ii) in any other way specified in the notice; and
- (b) unless the notice is withdrawn, if the person pays the infringement penalty within 28 days after the day when the notice is served on the person (or any longer time allowed in writing by the authorised officer):
  - (i) any liability of the person for the offence to which the notice relates will be discharged; and
  - (ii) the person will not be prosecuted in court for the offence; and
  - (iii) the person will not be taken to have been convicted of the offence; and
- (c) if the person does not pay the infringement penalty within that time, the person may be prosecuted in court for the offence; and
- (d) if the person wishes a court to decide whether he or she is guilty of the offence, the person must notify the Competent Authority accordingly in writing within 28 days after the day when the notice is served on the person; and
- (e) if the person notifies the Competent Authority in writing of that wish within the 28 days:
  - (i) the infringement notice may be withdrawn; and
  - (ii) he or she may be prosecuted in court for the offence; and
- (f) if the person is prosecuted in court and found guilty of the offence, the person may be convicted of the offence and ordered to pay a penalty and costs, and be subject to any other order that the court makes.

### **21.1.6 Reminder notices**

- (1) If an infringement notice is served by an authorised officer on a person for an offence and the infringement penalty specified in the notice is not paid within 28 days after the day when the notice is served on the person, the officer may give a reminder notice to the person.
- (2) The reminder notice must:
  - (a) include the information mentioned in clause 21.1.4(a)–(h); and
  - (b) contain the additional information required by clause 21.1.7; and
  - (c) be signed by the authorised officer.

21.1.7 Additional information in reminder notices

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### **21.1.7 Additional information in reminder notices**

The reminder notice must inform the person that:

- (a) the time for payment of the infringement penalty specified in the infringement notice has been extended; and
- (b) the person may pay the infringement penalty specified in the infringement notice:
  - (i) by posting or delivering the payment to the place of payment specified in the notice; or
  - (ii) in any other way specified in the notice; and
- (c) unless the infringement notice is withdrawn, if the person pays the infringement penalty within 28 days after the day when the reminder notice is served on the person (or any longer time allowed in writing by the authorised officer):
  - (i) any liability of the person for the offence to which the notices relate will be discharged; and
  - (ii) the person will not be prosecuted in court for the offence; and
  - (iii) the person will not be taken to have been convicted of the offence; and
- (d) if the person does not pay the infringement penalty within that time, the person may be prosecuted in court for the offence; and
- (e) if the person wishes a court to decide whether he or she is guilty of the offence, the person must notify the Competent Authority in writing within 28 days after the day when the reminder notice is given to the person; and
- (f) if the person notifies the Competent Authority in writing of that wish within the 28 days:
  - (i) the infringement notice may be withdrawn; and
  - (ii) he or she may be prosecuted in court for the offence; and
- (g) if the person is prosecuted in court and found guilty of the offence, the person may be convicted of the offence and ordered to pay a penalty and costs, and be subject to any other order that the court makes.

### **21.1.8 Withdrawal of infringement notices**

- (1) A notice withdrawing an infringement notice served on a person for an offence must:
  - (a) include the following information:
    - (i) the full name, or surname and initials, and address of the person;
    - (ii) the number of the notice;
    - (iii) the date of service of the notice; and
  - (b) state that the notice is withdrawn; and

21.1.9 Effect of Part

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- (c) if an authorised officer intends to bring a prosecution against the person in a court for the offence — state that a prosecution may be brought against the person in a court for the offence.
- (2) If the person has already paid the infringement penalty specified in the notice, the Competent Authority must refund it.

**21.1.9 Effect of Part**

- (1) This Part does not:
  - (a) require an infringement notice to be served on a person for an offence; or
  - (b) affect the liability of a person to be prosecuted for an offence if an infringement notice is not served on the person for the offence; or
  - (c) prevent the service of 2 or more infringement notices on a person for an offence; or
  - (d) affect the liability of a person to be prosecuted for an offence if the person does not comply with an infringement notice for the offence; or
  - (e) limit or otherwise affect the penalty that may be imposed by a court on a person convicted of an offence.
- (2) However, if the person on whom an infringement notice is served for an offence pays the infringement penalty specified in the notice:
  - (a) any liability of the person for the offence is discharged; and
  - (b) the person may not be prosecuted in a court for the offence; and
  - (c) the person is not taken to have been convicted of the offence.

## Part 22 Transitional

### 22.1.1 Lawful conduct under previous law

- (1) A person does not commit an offence against the Act or this subordinate instrument if, within the period of 12 months *{local variation}* after the commencement of the Act, the person transports dangerous goods by road or rail in accordance with the law that regulated the transport of dangerous goods by road or rail and was in force in this jurisdiction immediately before the commencement of the Act.
- (2) Where an exemption or approval that is continued in effect by virtue of this Part does not have an expiry date, it will expire on the fifth anniversary of the commencement of the Act.

### 22.1.2 Continuing effect of certain determinations

- (1) This clause applies to a determination (however described) that:
  - (a) was made under a law that regulated the transport of dangerous goods by road or rail; and
  - (b) was in force in this jurisdiction immediately before the commencement of the Act; and
  - (c) is a determination in respect of something that may be determined under a provision (the *relevant provision*) of any of the following clauses:
    - (i) 1.5.1 (Determinations — dangerous goods and packaging);
    - (ii) 1.5.3 (Determinations — vehicles, routes, areas and times).
- (2) The determination has effect for this subordinate instrument as if it were a determination made by the Competent Authority under the relevant provision.
- (3) Without limiting subclause (1), the Competent Authority may record the determination in the register of determinations kept under clause 1.5.6.
- (4) Subclause (3) does not apply to a determination if it was made on the application of a person and applies only to the person.

### 22.1.3 Continuing effect of corresponding determinations

- (1) This clause applies to a determination (however described) that:
  - (a) was made under a law regulating the transport of dangerous goods by road or rail made by a jurisdiction that has passed or has indicated that it intends to pass a corresponding law; and
  - (b) was in force in this jurisdiction immediately before the commencement of the Act; and
  - (c) is a determination about something that may be determined under a provision of the law of the other jurisdiction (the *corresponding*

#### 22.1.4 Continuing effect of certain exemptions

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*provision*) that corresponds to a provision of a clause mentioned in clause 22.1.2(1)(c).

- (2) Except for circumstances that do not exist in this jurisdiction, the determination has effect for this subordinate instrument as if it were a determination made by a corresponding authority under the corresponding provision.

#### 22.1.4 Continuing effect of certain exemptions

- (1) This clause applies to an exemption (however described) that:
  - (a) was granted under a law regulating the transport of dangerous goods by road or rail; and
  - (b) was in force in this jurisdiction immediately before the commencement of the Act; and
  - (c) is an exemption from compliance with a provision of that law corresponding to a provision (the *relevant provision*) of this subordinate instrument.
- (2) The exemption has effect for this subordinate instrument as if it were an exemption granted by the Competent Authority from compliance with the relevant provision.
- (3) Without limiting subclause (2), the Competent Authority may record the exemption in the register of exemptions kept under clause 16.1.2.

#### 22.1.5 Continuing effect of corresponding exemptions

- (1) This clause applies to an exemption (however described) that:
  - (a) was granted under a law regulating the transport of dangerous goods by road or rail made by a jurisdiction that has passed or has indicated that it intends to pass a corresponding law; and
  - (b) was in force in the other jurisdiction immediately before the commencement of the Act; and
  - (c) is an exemption from compliance with a provision of the law of the other jurisdiction (the *corresponding provision*) corresponding to a provision of the Act or this subordinate instrument.
- (2) Except for circumstances that do not exist in this jurisdiction, the exemption has effect for the Act or this subordinate instrument as if it were an exemption granted by a corresponding authority from compliance with the corresponding provision.

#### 22.1.6 Continuing effect of certain approvals

- (1) This clause applies to an approval (however described) if the approval:
  - (a) was given under a law regulating the transport of dangerous goods by road; and
  - (b) was in force in this jurisdiction immediately before the commencement of the Act; and

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22.1.7 Continuing effect of corresponding approvals

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- (c) is an approval of something that may be approved under a provision (the ***relevant provision***) of any of the following provisions:
  - (i) clause 1.3.2 (Approvals — tests and training courses for drivers);
  - (ii) Division 4.2 (Suitability and design of packaging);
  - (iii) clause 9.1.8 (Approvals — segregation devices);
  - (iv) clause 9.1.9 (Approvals — methods of segregation);
  - (v) clause 11.2.7 (Approvals — emergency information).
- (2) The approval has effect for this subordinate instrument as if it were an approval given by the Competent Authority under the relevant provision.
- (3) Without limiting subclause (2), the Competent Authority may record the approval in the register of approvals kept under clause 17.3.1.

### 22.1.7 Continuing effect of corresponding approvals

- (1) This subordinate instrument applies to an approval (however described) that:
  - (a) was given under a law regulating the transport of dangerous goods by road or rail made by a jurisdiction that has passed or has indicated that it intends to pass a corresponding law; and
  - (b) was in force in the other jurisdiction immediately before the commencement of the Act; and
  - (c) is an approval of something that may be approved under a provision of the law of the other jurisdiction (the ***corresponding provision***) corresponding to a provision mentioned in clause 22.1.6(1)(c).
- (2) Except for circumstances that do not exist in this jurisdiction, the approval has effect for this subordinate instrument as if it were an approval given by a corresponding authority under the corresponding provision.

### 22.1.8 Continuing effect of certain licences

- (1) This clause applies to a licence (however described) that:
  - (a) was granted under a law regulating the transport of dangerous goods by road; and
  - (b) was in force in this jurisdiction immediately before the commencement of the Act; and
  - (c) is a licence that may be granted under either of the following provisions (the ***relevant provision***):
    - (i) clause 18.3.5 (Grant of dangerous goods driver licences);
    - (ii) clause 18.4.4 (Grant of dangerous goods vehicle licences).

22.1.9 Continuing effect of corresponding licences

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- (2) The licence has effect for this subordinate instrument as if it were a licence granted by the Competent Authority under the relevant provision.
- (3) Without limiting subclause (2), the Competent Authority may record the licence in the relevant register of licences kept under clause 18.6.5.

**22.1.9 Continuing effect of corresponding licences**

- (1) This clause applies to a licence (however described) that:
  - (a) was granted under a law regulating the transport of dangerous goods by road or rail made by a jurisdiction that has passed or has indicated that it intends to pass a corresponding law; and
  - (b) was in force in the other jurisdiction immediately before the commencement of the Act; and
  - (c) is a licence that may be granted under a provision of the law of the other jurisdiction (the *corresponding provision*) corresponding to a provision mentioned in clause 22.1.8(1)(c).
- (2) Except for circumstances that do not exist in this jurisdiction, the licence has effect for this subordinate instrument as if it were a licence granted by a corresponding authority under the corresponding provision.

## Schedule 1 Penalties

[Drafting note: The penalties set out in this Schedule are recommended penalties only. It is intended that, when the model law is adopted by a State or Territory, the adopting State or Territory will adopt or replace the recommended penalties.]

Offence provision	Infringement penalty (\$)	Maximum court-imposed penalty on individual (\$)
<i>Division 1.1 Introductory and application</i>		
1.1.7(3) Special provisions for tools of trade and dangerous goods for private use	800	4 000
1.1.7(4) Special provisions for tools of trade and dangerous goods for private use	800	4 000
1.1.7(5) Special provisions for tools of trade and dangerous goods for private use	800	4 000
<i>Division 1.3 Training</i>		
1.3.1(2) Instruction and training	800	4 000
1.3.1(3) Instruction and training	800	4 000
<i>Division 1.4 Provisions about offences generally</i>		
1.4.2 Goods suspected of being dangerous goods	800	4 000
<i>Division 1.5 Determinations</i>		
1.5.4(2) Determinations may be subject to conditions	800	4 000
1.5.8(1) Offence to do any thing prohibited or regulated by a determination	800	4 000
<i>Part 3 Transport of dangerous goods to which special provisions apply</i>		
3.1.2 Consignor's duties	400	2 000
3.1.3 Packer's duties	400	2 000
3.1.4 Loader's duties	400	2 000
3.1.5 Prime contractor's and rail operator's duties	400	2 000
3.1.6 Driver's duties	200	1 000
<i>Division 4.2 Suitability and design of packaging</i>		
4.2.2(1) Marking packaging	800	4 000
4.2.2(2) Marking packaging	800	4 000
4.2.4(4) Approval of packaging designs	800	4 000

## Schedule 1 Penalties

Offence provision	Infringement penalty (\$)	Maximum court-imposed penalty on individual (\$)
4.2.7(3) Approval of overpack preparation method	800	4 000
<i>Division 4.3 Prohibition on the sale or supply of non-compliant packaging</i>		
4.3.1(1) Offence to sell or supply non-compliant packaging	800	4 000
<i>Division 4.4 Offences relating general packaging</i>		
4.4.2 Consignor's duties	800	4 000
4.4.3(1) Packer's duties	800	4 000
4.4.3(2) Packer's duties	800	4 000
4.4.4 Loader's duties	800	4 000
4.4.5 Prime contractor's and rail operator's duties	800	4 000
4.4.6 Driver's duties	400	2 000
<i>Division 4.5 Offences relating to other packaging</i>		
4.5.2(1) Manufacturer's duties — compliance plates — tanks	800	4 000
4.5.2(1A) Manufacturer's duties — compliance plates — MEGCs	800	4 000
4.5.2(3) Manufacturer's duties — compliance plates — tank vehicles	800	4 000
4.5.3(1) Owner's duties — portable tanks, demountable tanks and MEGCs	800	4 000
4.5.4(1) Consignor's duties	800	4 000
4.5.4(2) Consignor's duties	800	4 000
4.5.5(1) Packer's duties	800	4 000
4.5.5(2) Packer's duties	800	4 000
4.5.6 Loader's duties	800	4 000
4.5.7(1) Prime contractor's and rail operator's duties	800	4 000
4.5.7(2) Prime contractor's and rail operator's duties	800	4 000
4.5.8 Driver's duties	260	1 300
<i>Division 4.6 Offences relating to overpacks</i>		
4.6.1(1) Consignor's duties	400	2 000
4.6.2 Packer's duties	400	2 000
4.6.3 Loader's duties	400	2 000

## Schedule 1 Penalties

Offence provision	Infringement penalty (\$)	Maximum court-imposed penalty on individual (\$)
4.6.4 Prime contractor's and rail operator's duties	400	2 000
4.6.5 Driver's duties	200	1 000
<b>Division 5.1 Marking and labelling</b>		
5.1.2(1) Consignor's duties	(a) for large packaging or overpack — 400 (b) in any other case — 130	(a) for large packaging or overpack — 2 000 (b) in any other case — 650
5.1.2(2) Consignor's duties	(a) for large packaging or overpack — 400 (b) in any other case — 130	(a) for large packaging or overpack — 2 000 (b) in any other case — 650
5.1.2(3) Consignor's duties	(a) for large packaging or overpack — 400 (b) in any other case — 130	(a) for large packaging or overpack — 2 000 (b) in any other case — 650
5.1.3(1) Packer's duties	(a) for large packaging or overpack — 400 (b) in any other case — 130	(a) for large packaging or overpack — 2 000 (b) in any other case — 650
5.1.3(2) Packer's duties	(a) for large packaging or overpack — 400 (b) in any other case — 130	(a) for large packaging or overpack — 2 000 (b) in any other case — 650
5.1.3(3) Packer's duties	(a) for large packaging or overpack — 400 (b) in any other case — 130	(a) for large packaging or overpack — 2 000 (b) in any other case — 650

## Schedule 1 Penalties

Offence provision	Infringement penalty (\$)	Maximum court-imposed penalty on individual (\$)
5.1.4(1) Prime contractor's and rail operator's duties	(a) for large packaging or overpack — 400 (b) in any other case — 130	(a) for large packaging or overpack — 2 000 (b) in any other case — 650
5.1.4(2) Prime contractor's and rail operator's duties	(a) for large packaging or overpack — 400 (b) in any other case — 130	(a) for large packaging or overpack — 2 000 (b) in any other case — 650
5.1.4(3) Prime contractor's and rail operator's duties	(a) for large packaging or overpack — 400 (b) in any other case — 130	(a) for large packaging or overpack — 2 000 (b) in any other case — 650
<b>Division 5.2 Placarding</b>		
5.2.3(1) Consignor's duties	800	4 000
5.2.3(2) Consignor's duties	800	4 000
5.2.3(3) Consignor's duties	800	4 000
5.2.3(5) Consignor's duties	800	4 000
5.2.4(1) Loader's duties	800	4 000
5.2.4(2) Loader's duties	800	4 000
5.2.4(3) Loader's duties	800	4 000
5.2.4(5) Loader's duties	800	4 000
5.2.5(1) Prime contractor's and rail operator's duties	800	4 000
5.2.5(2) Prime contractor's and rail operator's duties	800	4 000
5.2.5(3) Prime contractor's and rail operator's duties	800	4 000
5.2.5(5) Prime contractor's and rail operator's duties	800	4 000
5.2.6(1) Driver's duties	400	2 000
5.2.6(2) Driver's duties	400	2 000
5.2.6(3) Driver's duties	400	2 000
5.2.6(4) Driver's duties	400	2 000

Offence provision	Infringement penalty (\$)	Maximum court-imposed penalty on individual (\$)
<b>Part 6</b> <i>Safety standards — vehicles and equipment</i>		
6.1.1(1) Owner's duties	800	4 000
6.1.2 Consignor's duties	800	4 000
6.1.3 Loader's duties	400	2 000
6.1.4(1) Prime contractor's and rail operator's duties	800	4 000
6.1.5 Driver's duties	400	2 000
<b>Division 7.1</b> <i>Self-reactive substances, organic peroxides and certain other substances</i>		
7.1.2 Consignor's duties	400	2 000
7.1.3(1) Loader's duties	400	2 000
7.1.4(1) Prime contractor's and rail operator's duties	400	2 000
7.1.4(2) Prime contractor's and rail operator's duties	400	2 000
7.1.5 Driver's duties	260	1 300
<b>Division 7.2</b> <i>Goods too dangerous to be transported</i>		
7.2.2 Loader's duties	400	2 000
7.2.3 Prime contractor's and rail operator's duties	400	2 000
7.2.4 Driver's duties	260	1 300
<b>Division 7.3</b> <i>Nominally empty storage vessels</i>		
7.3.2 Consignor's duties	400	2000
7.3.3(1) Loader's duties	400	2000
7.3.4 Prime contractor's and rail operator's duties	400	2000
7.3.5 Driver's duties	260	1300
<b>Part 8</b> <i>Stowage and attachment</i>		
8.1.1(1) Consignor's duties	400	2 000
8.1.1(2) Consignor's duties	400	2 000
8.1.2(1) Loader's duties	400	2 000
8.1.2(2) Loader's duties	400	2 000
8.1.3(1) Prime contractor's and rail operator's duties	400	2 000
8.1.3(2) Prime contractor's and rail operator's duties	400	2 000

Offence provision	Infringement penalty (\$)	Maximum court-imposed penalty on individual (\$)
8.1.4(1) Driver's duties	260	1 300
8.1.4(2) Driver's duties	260	1 300
<i>Part 9 Segregation</i>		
9.1.3 Consignor's duties	800	4 000
9.1.4 Loader's duties	800	4 000
9.1.5 Prime contractor's duties	800	4 000
9.1.6 Rail operator's duties	800	4 000
9.1.7 Driver's duties	260	1 300
9.1.9(3) Approvals — methods of segregation	800	4000
<i>Division 10.2 Equipment and transfer</i>		
10.2.1(1) Transferor's duties — hose assemblies	400	2 000
10.2.1(2) Transferor's duties — hose assemblies	800	4 000
10.2.2(1) Transferor's duties — general	400	2 000
10.2.2(2) Transferor's duties — general	400	2 000
10.2.2(3) Transferor's duties — general	400	2 000
10.2.3(1) Occupier's duties	400	2 000
10.2.3(2) Occupier's duties	800	4 000
10.2.3(3) Occupier's duties	130	650
10.2.4(1) Prime contractor's duties	400	2 000
10.2.4(2) Prime contractor's duties	800	4 000
10.2.4(3) Prime contractor's duties	130	650
10.2.5(1) Rail operator's duties	400	2 000
<i>Division 10.3 Filling ratio and ullage</i>		
10.3.2(1) Transferor's duties	400	2 000
10.3.2(2) Transferor's duties	400	2 000
10.3.3(1) Prime contractor's and rail operator's duties	400	2 000
10.3.3(2) Prime contractor's and rail operator's duties	400	2 000
10.3.4(1) Driver's duties	400	2 000

## Schedule 1 Penalties

Offence provision	Infringement penalty (\$)	Maximum court-imposed penalty on individual (\$)
10.3.4(2) Driver's duties	400	2 000
<i>Division 11.1 Transport documentation</i>		
11.1.1 False or misleading information	800	4 000
11.1.2(1) Consignor's duties — transport by road	260	1 300
11.1.2(2) Consignor's duties — transport by road	260	1 300
11.1.3(1) Consignor's duties — transport by rail	260	1 300
11.1.4(1) Prime contractor's duties	400	2 000
11.1.5(1) Rail operator's duties	400	2 000
11.1.6(1) Driver's duties	260	1 300
11.1.6(2) Driver's duties	260	1 300
11.1.7(2) Train driver's duties	260	1 300
11.1.7(3) Train driver's duties	260	1300
11.1.8(2) Prime contractor's duties — retention of documents	260	1300
<i>Division 11.2 Emergency information</i>		
11.2.2 Consignor's duties	260	1 300
11.2.3(1) Prime contractor's duties	400	2 000
11.2.4(1) Rail operator's duties	400	2 000
11.2.5(1) Driver's duties	260	1 300
11.2.5(2) Driver's duties	260	1300
11.2.5(3) Driver's duties	260	1 300
11.2.6(1) Train driver's duties	260	1 300
11.2.6(2) Train driver's duties	260	1 300
<i>Division 11.3 Dangerous goods packed in limited quantities</i>		
11.3.1 Consignor's duties	260	1300
11.3.2 Prime contractor's duties	260	1300
11.3.3 False or misleading information	800	4000
<i>Part 12 Safety equipment</i>		
12.1.1(1) Owner's duties	800	4 000
12.1.2(1) Prime contractor's duties	800	4 000
12.1.2(2) Prime contractor's duties	800	4 000

## Schedule 1 Penalties

Offence provision	Infringement penalty (\$)	Maximum court-imposed penalty on individual (\$)
12.1.3(1) Driver's duties	260	1 300
12.1.3(2) Driver's duties	260	1 300
<i>Division 13.1 Immobilised and stopped vehicles</i>		
13.1.1(2) Driver's duties	130	650
13.1.2(1) Prime contractor's duties	400	2 000
13.1.2(2) Prime contractor's duties	400	2 000
13.1.3 Rail operator's duties	400	2 000
<i>Division 13.2 General precautions—drivers' duties</i>		
13.2.1(1) Driving	130	650
13.2.2(1) Parking	260	1 300
13.2.3(2) Control of ignition sources	800	4 000
13.2.3(3) Control of ignition sources	800	4 000
13.2.4(1) Unloading	800	4 000
13.2.5(1) Detaching trailer	800	4 000
13.2.6(1) Road tank vehicle equipped with burner	800	4 000
<i>Division 13.3 General precautions—prime contractor's duties</i>		
13.3.1(1) Parking	260	1300
13.3.2(1) Unloading	800	4000
13.3.3(1) Detaching trailer	800	4000
13.3.4(1) Road tank vehicle equipped with burner	800	4000
<i>Division 14.1 Emergencies generally</i>		
14.1.1(2) Duties of drivers of road vehicles	260	1 300
14.1.2(2) Driver's and rail operator's duties	260	1 300
14.1.2(3) Driver's and rail operator's duties	260	1 300
14.1.3(2) Prime contractor's and rail operator's duties — food or food packaging	800	4 000
14.1.3(3) Prime contractor's and rail operator's duties — food or food packaging	800	4 000

## Schedule 1 Penalties

Offence provision	Infringement penalty (\$)	Maximum court-imposed penalty on individual (\$)
14.1.4(2) Prime contractors and rail operators to inform Competent Authority	400	2 000
14.1.4(3) Prime contractors and rail operators to inform Competent Authority	400	2 000
<i>Division 14.2 Emergencies involving placard loads</i>		
14.2.1(2) Telephone advisory service	800	4 000
14.2.1(3) Telephone advisory service	800	4 000
14.2.2(2) Emergency plans	800	4 000
14.2.2(3) Emergency plans	800	4 000
14.2.2(4) Emergency plans	800	4 000
14.2.2(5) Emergency plans	800	4 000
14.2.3(2) Consignor's duties — information and resources	400	2 000
14.2.4(2) Prime contractor's and rail operator's duties — information and resources	400	2 000
<i>Division 18.4 Dangerous goods vehicle licences</i>		
18.4.9(1) Disposal and transfer of licensed vehicles	130	650
18.4.9(2) Disposal and transfer of licensed vehicles	130	650
18.4.9(3) Disposal and transfer of licensed vehicles	130	650
18.4.9(5) Disposal and transfer of licensed vehicles	130	650
<i>Division 18.5 Requirements relating to dangerous goods driver licences</i>		
18.5.1(1) Licences to be carried	130	650
<i>Division 18.6 Licences generally</i>		
18.6.3(1) Failure to comply with licence conditions	800	4 000
18.6.7(2) Change of information given in licence applications	130	650
18.6.8(2) Production of licences to licensing authority	130	650
<i>Part 20 Insurance</i>		
20.1.1(1) Owner's duties	1200	6 000

Offence provision	Infringement penalty (\$)	Maximum court-imposed penalty on individual (\$)
20.1.2(1) Prime contractor's duties	1200	6 000
20.1.3(2) Requiring evidence of insurance etc	260	1 300

*Note 1* The maximum infringement penalty for an offence must not exceed 20% of the maximum fine that could be imposed on an individual by a court for the offence (see section 92(3) of the Act).

*Note 2* Court-imposed maximum penalties for bodies corporate are 5 times those for individuals (see section 97(2) of the Act and clause 1.4.1(2)).