

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ROAD TRANSPORT REFORM (DANGEROUS GOODS) BILL

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport,  
the Honourable Laurie Brereton MP)

## ROAD TRANSPORT REFORM (DANGEROUS GOODS) BILL

### OUTLINE

The Road Transport Reform (Dangerous Goods) Bill establishes a legislative framework for nationally uniform or consistent regulations for the transport of dangerous goods by road. The national regulatory scheme will eliminate differences between the laws of States and Territories. This is intended to reduce the cost and administrative burden which presently falls on interstate operators, while continuing to maintain the highest safety standards.

The Bill has been developed by the National Road Transport Commission. The National Road Transport Commission was established in 1992 following two Agreements in which the Commonwealth, the States and the Territories agreed to develop nationally uniform or consistent road transport regulations. Under the Heavy and Light Vehicles Agreements (which are scheduled to the *National Road Transport Commission Act 1991*), the Commission is required to produce uniform or consistent regulations in relation to a number of aspects of road transport, including national standards and associated codes of practice in relation to the transport of dangerous goods.

The Agreements require the Commission to submit proposed legislation to the Ministerial Council for Road Transport. The Ministerial Council comprises Commonwealth, State and Territory Ministers responsible for road transport. The Ministerial Council is required to consider legislation proposed by the Commission for a period of two months and then either to disapprove or not disapprove the legislation. A majority of the Ministerial Council agreed to not disapprove this Bill on 30 September 1994. The Agreements require the Commonwealth to submit legislation not disapproved by the Ministerial Council to the Commonwealth Parliament. This Bill is submitted in accordance with that requirement.

The purpose of the Bill is to regulate the transport of dangerous goods by road in the Australian Capital Territory and Jervis Bay Territory. The Agreements require each State and Territory to take such steps as are appropriate to secure the passage of legislation which provides that the provisions of this Bill take effect, as amended from time to time, as the law of that State or Territory. It is therefore intended that provisions identical to the substantive provisions of this Bill will be enacted in all jurisdictions.

The Bill puts in place the key elements of the legislative scheme for the making, administration and enforcement of uniform or consistent national regulations relating to the road transport of dangerous goods. It contains a power to make regulations, and these are currently being prepared by the Commission, in consultation with State regulatory authorities and industry. These will incorporate provisions of the Australian Dangerous Goods and Explosives Codes. The Agreements require each of the States and the Northern Territory to apply those regulations

automatically, as amended from time to time, as the law of its own jurisdiction.

The Bill also contains provisions for the administration and enforcement of the dangerous goods legislation. These empower regulatory authorities and their authorised officers to monitor compliance with the legislation, to prosecute breaches, and to take action to protect public safety. They also allow regulatory authorities to vary the application of the legislation to the extent necessary to deal with the particular needs of jurisdictions and changing technical requirements.

#### **FINANCIAL IMPACT STATEMENT**

When regulations under the Bill are made, there will be in place a uniform system of regulation of the road transport of dangerous goods between the States. This will reduce the cost to industry and the community which arise out of the present differences between jurisdictions. The measures in the Bill have no significant impact on Commonwealth revenues or expenditure.

## NOTES ON CLAUSES

### **PART 1 - PRELIMINARY**

#### **1. Short Title**

This clause says that the Act may be cited as the *Road Transport Reform (Dangerous Goods) Act 1994*.

#### **2. Commencement**

This clause is a commencement provision. The operative provisions of the Act commence on a day to be fixed by proclamation. If those provisions have not commenced by a day which is within twelve months of the Act receiving the Royal Assent, they commence the day after that day.

#### **3. Purpose**

This clause declares that the purpose of the Act is to regulate the transport of dangerous goods by road in the Australian Capital Territory and the Jervis Bay Territory in order to promote public safety and protect property and the environment. The clause further declares that it is intended that States and the Northern Territory will adopt as the primary law of those States and that Territory section 6 and Parts 3, 4, 5 and 6 of the Act and the Regulations made under the Act, as part of the uniform national road transport legislation envisaged by the *National Road Transport Commission Act 1991* and the Agreements scheduled thereto. It is therefore intended that sections 1, 2, 3, 4, 5, 7, 8, 9 and 10 and Part 2 will apply in the Australian Capital Territory and Jervis Bay Territory only, and that States and the Northern Territory will enact any necessary corresponding provisions.

#### **4. Status of this Act under Commonwealth and ACT Laws**

This clause says that for the purposes of laws of the Commonwealth and the laws of the Australian Capital Territory, the Act is taken to be a law made by the Legislative Assembly for the Australian Capital Territory. This does not empower the Legislative Assembly for the Australian Capital Territory to make a law amending or appealing the Act.

#### **5. Applications for Review**

This clause says that applications for review of decisions under the Act are to be made to the Administrative Appeals Tribunal.

#### **6. Definitions**

This clause defines the terms "authorised officer", "Competent Authority", "dangerous goods", "dangerous situation", "government authority", "involvement in the transport of dangerous goods by road", "offence", "premises", "this Act", and "transport" for the purposes of the Act.

## **7. Binding the Crown**

This clause declares that the Act (which includes the regulations) binds the Crown in all its capacities. The clause also declares that it is intended that an adopting law of a State or of the Northern Territory will bind the Crown in all its capacities, including the Crown in right of the Commonwealth.

## **8. Act to cease to be in force**

This clause says that the Act ceases to be in force when the *National Road Transport Commission Act 1991* ceases to be in force.

## **9. Application of Commonwealth Acts Interpretation Act**

This clause says that the *Commonwealth Acts Interpretation Act 1901* applies to the interpretation of this Act (which includes the regulations) except in relation to the definition of "Government Gazette" and "Minister". The clause also declares that it is intended that the provisions of the *Commonwealth Acts Interpretation Act 1901* will be applied to the interpretation of section 6 and Parts 3, 4, 5 and 6 of this Act and the regulations as adopted by a State or Territory. The interpretation legislation of a State or of the Australian Capital Territory or Northern Territory may apply to the interpretation of those provisions to the extent that it can do so consistently with the application of the *Commonwealth Acts Interpretation Act 1901*.

## **10. Scope of this Act**

This clause excludes from the scope of the Act dangerous goods that are in a container that forms part of the fuel or propulsion system of a vehicle. The clause also provides that the Act has effect despite any other law, except an inconsistent law of the Australian Capital Territory that relates to the storage and handling of dangerous goods and does not relate to the transport of dangerous goods by road. In that case that other law prevails.

## **PART 2 - REGULATIONS**

### **11. Regulation-making powers and adoption of codes or standards**

This clause provides for the making of regulations on a wide range of matters required or permitted to be prescribed by the Act or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The clause sets out a number of particular matters in relation to which regulations may be made, including classification, labelling, packaging, stowage and transport of dangerous goods, mandatory accreditation of persons involved in the transport of dangerous goods and obligations arising in an emergency.

The clause also enables regulations made under the Act to apply, adopt or incorporate any or all of the provisions of a code or standard relating to dangerous goods or transport by road and provide that such a code or standard may be incorporated as it exists, as amended by the regulations or as amended from time to time. Where the regulations apply, adopt or incorporate provisions of a code or standard under this section, notice of the adoption or incorporation must be given in the Government Gazette and the code or standard must be available to be inspected or obtained.

## **12. Penalties under the regulations**

This clause enables the regulations to create offences for breach of the regulations and to prescribe a maximum penalty:

- (a) not exceeding \$3,000 for an individual; and
- (b) not exceeding \$15,000 for a body corporate.

## **PART 3 - APPOINTMENT AND POWERS OF COMPETENT AUTHORITIES AND AUTHORISED OFFICERS**

### **13. Appointment of Competent Authorities**

This clause says that the Minister may appoint Competent Authorities by notice in the Government Gazette. It is intended that a Competent Authority will be the person responsible for the administration and enforcement of the Act and the regulations. A Competent Authority has all the powers of an authorised officer.

### **14. Appointment of authorised officers**

This clause says that a Competent Authority may by notice in the Government Gazette appoint as many authorised officers as are necessary to administer the Act. The powers that are exercisable by the person so appointed, and the circumstances in which the powers may be exercised may be the subject of conditions or restrictions.

### **15. Identification cards**

This clause requires a Competent Authority to issue each authorised officer with an identification card which must be carried by the officer while on duty and, if practicable, produced before exercising a power under the Act. An identification card must contain any details which are prescribed in the regulations.

### **16. Return of identification cards**

This clause provides that a person who stops being an authorised officer must return his or her identification card to the Competent Authority as soon as practicable.

#### **17. Competent Authority may delegate powers**

This clause empowers the Competent Authority to delegate by signed instrument any of his or her powers under the Act, other than the power to appoint authorised officers and the power to delegate to authorised officers.

#### **18. General powers of authorised officers**

This clause sets out the powers which may be exercised by an authorised officer in relation to:

- premises, equipment and vehicles believed to be used in relation to the transport of dangerous goods by road;
  - dangerous situations in relation to the transport of dangerous goods by road;
- compliance with the Act.

The powers include:

- entry and search of premises;
- detention and search of vehicles;  
inspection of vehicles or equipment;  
taking samples;  
seizing and copying documents;
- requiring persons to answer questions;  
making photographic, mechanical or electronic recordings.

#### **19. Authorised officer may require name and address**

This clause empowers an authorised officer to obtain the name and address of a person believed on reasonable grounds to be involved in the transport of dangerous goods by road.

#### **20. Powers of authorised officer where offence suspected**

This clause provides that if an authorised officer believes on reasonable grounds that he or she will find evidence of an offence at premises or on a vehicle or equipment he or she may enter the premises, search, test, secure and seize the evidence. Where the premises are unattended or are a residence, the authorised officer may only enter with the consent of the occupier of the premises or with a warrant. The clause also empowers an authorised officer to detain a vehicle, search the vehicle or equipment, and to have the vehicle moved to a suitable location for inspection.

**21. Authorised officer to restore vehicle or equipment to original condition after inspection**

This clause requires an authorised officer to take reasonable steps to return premises, vehicle equipment inspected under section 18 or 20 to the condition they were in immediately before the inspection.

**22. Offence to fail to comply with a direction**

This clause says that a person who without reasonable excuse fails to comply with the direction of an authorised officer made under section 18 or 20 or obstructs the officer in the exercise of his or her power, or knowingly provides false or misleading information is guilty of an offence.

**23. Self incrimination no excuse**

This clause provides that a person is not excused from answering a question asked under section 18 on the grounds that the answer might tend to incriminate the person. The answer to the question and information, documents or things obtained as a direct or indirect consequence of the answer to the question are generally not admissible in evidence against the person in criminal proceedings.

**24. Obtaining a warrant**

This clause provides for the issue of warrants in relation to entering residences, unattended premises or unattended vehicles or equipment. An authorised officer may apply to a Magistrate for such a warrant where he believes on reasonable grounds that there is, or will be within the next 72 hours, evidence of an offence at the premises, at the vehicle or equipment.

The clause sets out the matters which must be included in the application for a warrant and the matters which the Magistrate must include in the warrant when it is issued.

**25. Magistrates may issue warrants by telephone or facsimile**

This clause provides for the application for a warrant by telephone, facsimile or other electronic means in urgent cases or where the delay that would occur if the application were made in person would frustrate the effective execution of the warrant. The clause sets out the procedures to be followed in applying for a warrant and requires most of the formalities which apply to applications in person under section 24 to be complied with.

**26. Availability of assistance and use of force in executing a warrant**

This clause allows a warrant to authorise a police officer to assist in executing the warrant and allows the authorised officer or police officer assisting to use such force as is

necessary and reasonable in the circumstances to execute the warrant.

#### **27. Search and seizure etc of other evidence**

This clause allows an authorised officer to seize or preserve evidence of an offence which has been found while carrying out a search under the Act.

#### **28. Notice to remedy contravention**

This clause empowers an authorised officer to issue a notice to a person whom the officer believes is contravening the Act (which includes the regulations) or has contravened the Act in circumstances that make it likely that the contravention will be repeated. The notice must specify the provision believed to be being contravened and will require the person to remedy the matters causing the contravention.

The clause sets out formal matters in relation to the notice and says that a person who contravenes a notice, or removes it from a vehicle before matters causing the contravention have been remedied, is guilty of an offence.

#### **29. Notice to eliminate or minimise danger**

This clause empowers an authorised officer to issue a notice against a person when the officer believes that a dangerous situation exists and that person is in a position to take measures to avert, eliminate or minimise the danger. The notice must state the measures to be taken and will require the person to take those measures.

The clause sets out formal matters in relation to the notice and says that a person who contravenes a notice, or removes it from a vehicle before the required measures have been taken, is guilty of an offence.

#### **30. Review of notices**

This clause provides that a person to whom a notice under section 28 or 29 is directed may apply for a review of the decision to issue the notice. Clause 5 (which is not intended to be adopted by States and the Northern Territory) provides that applications for review of decisions under the Act are to be made to the Administrative Appeals Tribunal.

#### **31. Preventing injury and damage - taking direct action**

This clause empowers an authorised officer who believes on reasonable grounds that a dangerous situation exists and that a notice under section 28 or 29 will be ineffective to avert, eliminate or minimise the danger, to take or cause to be taken any action he or she believes on reasonable grounds to be necessary to avert, eliminate or minimise the danger.

## **PART 4 - EXEMPTIONS**

### **32. Exemptions**

This clause enables a person or a representative of a class of people to apply to a Competent Authority for an exemption from compliance with a provision of the regulations. The Competent Authority may grant an exemption if he or she is satisfied that:

- (a) it is not reasonably practicable for the person or people to comply with the provision; and
- (b) granting the exemption would not unduly increase the risk of death or injury to a person or harm to the environment or to property and would not cause unnecessary administrative or enforcement difficulties, particularly with respect to maintaining national uniformity of road transport laws.

The clause also deals with procedural and formal requirements relating to exemptions including the obligations on the Competent Authority in respect of giving notice of the exemption and in certain circumstances, notifying Competent Authorities in other States and Territories. The clause provides that a person who fails to comply with a condition to which an exemption is subject is guilty of an offence.

### **33. Variation and cancellation of exemptions and conditions**

This clause empowers a Competent Authority to cancel an exemption if he or she is satisfied that a condition to which the exemption is subject has not been complied with or is no longer satisfied of the matter of which he or she was required to be satisfied in order to have granted the exemption in the first place.

The clause also deals with the procedural and formal requirements relating to variation and cancellation of exemptions.

### **34. Application orders and emergency orders**

This clause provides that suspensions or variations of the regulations or specified parts of the regulations can be made in accordance with provisions relating to the application orders and emergency orders contained in the Agreements scheduled to the *National Road Transport Commission Act 1991*.

## **PART 5 - OFFENCES, PENALTIES, EVIDENCE AND PROCEDURE**

### **35. Failure to be accredited etc**

This clause provides that a person who is required by the regulations to be accredited or licensed, and who engages in the transport of dangerous goods by road in breach of that requirement, is guilty of an offence.

### **36. Goods too dangerous to transport**

This clause provides that a person who transports by road goods which are too dangerous to transport is guilty of an offence.

### **37. Duties concerning the transport of dangerous goods**

This clause sets out two duties concerning the safe transport of dangerous goods by road.

The first requires a person involved in the transport of dangerous goods by road to ensure, as far as is practicable, that the goods are transported in a safe manner. Failure to do so is an offence.

The second provides that a person involved in the transport of dangerous goods by road who fails to comply with a provision of the Act (which includes the regulations), in circumstances where the person knew, or ought reasonably to have known, that the failure would be likely to endanger the safety of another person or of property or the environment, is guilty of an offence.

### **38. Infringement notices**

This clause allows the regulations to provide for the use of infringement notices as an alternative to prosecution in court. The clause sets out certain procedural matters in relation to infringement notices which affect the rights of a person who is given an infringement notice, including the effect of payment of the penalty fixed in an infringement notice.

### **39. Proceedings for an offence**

This clause provides that a prosecution for an offence may be brought by an authorised officer.

### **40. Evidence**

This clause provides that in a prosecution for an offence an authorised officer may give evidence that he or she believes certain matters and where the Court considers the belief to be reasonable and there is no evidence to the contrary, the Court may accept the matter as proved.

The clause sets out the matters which may be proved in this manner.

The clause also provides for the admission into evidence of certain documents which appear to be certified by an authorised officer or appear to be signed by the Competent Authority or his or her delegate.

#### **41. Use of code of practice etc in proceedings**

This clause provides that a code of practice, guideline or other document which is approved by the Ministerial Council may be used in proceedings against a person for an offence relating to a contravention of a provision of the Act (which includes the regulations). Where the code of practice, guideline or other document specifies a means of complying with the provision and has been published in the Government Gazette or is otherwise available for purchase or inspection, the court is to regard a person who has acted in accordance with the code of practice, guideline or other document as having complied with the substantive provision.

#### **42. Conduct of company directors, employers or agents**

This clause provides for a number of matters relating to the prosecution of companies and their directors or senior managers. In particular, the clause provides:

- the conduct and state of mind of a director, employee or agent of a body corporate may be attributed to the body corporate in certain circumstances;
- the conduct and state of mind of an employee or agent may be attributed to another person, other than a body corporate, in certain circumstances.
- a director, secretary or manager of a body corporate may be liable to be punished (other than by imprisonment) where the body corporate has been convicted of the offence in certain circumstances.

### **PART 6 - MISCELLANEOUS**

#### **43. Recovery of costs from convicted person**

This clause enables a court on application by an authorised officer to require a person convicted of an offence to pay any costs that were reasonably incurred in taking action against the person and in the investigation of the offence. Such costs include costs for testing, transporting, storing and disposing of the dangerous goods and other evidence.

#### **44. Recovery of costs of government action**

This clause enables a government authority which incurs costs as a result of an incident involving the escape of dangerous goods or an explosion or fire involving dangerous goods, or the danger of such an escape, explosion or fire, to recover so much of the costs as were reasonably incurred.

The clause further provides that costs are recoverable jointly or severally from the owner of the dangerous goods, the person in control or possession of the dangerous goods and the person responsible for the transport of the goods at the relevant time, and from the person who caused the incident. A person

who can establish that the incident was not his or her fault will not be liable for these costs.

**45. Prohibiting a person from involvement in the dangerous goods transport industry**

This clause enables a court, in sentencing a person for an offence, to order the person be prohibited for a specified period from the involvement in the transport of dangerous goods by road. The clause sets out the matters to which the court must have regard when considering whether to make such an order.

**46. Forfeiture**

This clause empowers a court which has convicted a person for an offence in relation to dangerous goods to order the dangerous goods and their container to be forfeited in certain circumstances. Goods so forfeited may be destroyed, sold or otherwise disposed of as directed by the Competent Authority.

**47. Delegation**

This clause empowers the Minister to delegate by instrument in writing to a Competent Authority any or all of his or her powers under the Act (other than the power to make an application or emergency order).

**48. Protection from liability**

This clause protects an authorised officer from civil liability for acts or omissions done honestly and in good faith in the course of his or her duties. It does not affect any liability that might attach to an authorised officer's employer.

**49. Assistance in emergencies or accidents**

This clause protects a person from civil liability for an act done honestly and in good faith and without any fee, charge or other award, for the purpose of assisting or attempting to assist in a situation in which an emergency or accident involving dangerous goods occurs or is likely to occur.







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