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DANGEROUS GOODS SAFETY ACT 2004

DANGEROUS GOODS SAFETY (ROAD AND RAIL TRANSPORT OF NON-EXPLOSIVES) AMENDMENT REGULATIONS 2010

Dangerous Goods Safety Act 2004

Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Amendment Regulations 2010

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Amendment Regulations 2010*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day after that day.

3. Regulations amended

These regulations amend the *Dangerous Goods Safety (Road and Rail Transport of Non-explosives) Regulations 2007*.

4. Regulation 4 amended

- (1) In regulation 4 delete the definitions of:
ADG Code
combination

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package

packaging

- (2) In regulation 4 insert in alphabetical order:

ADG Code means the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, Seventh edition, 2007, published by the Commonwealth of Australia (ISBN 1 921168 57 9) (also called the Australian Dangerous Goods Code) including (for the avoidance of doubt) its appendices;

combination means a road vehicle consisting of a motor vehicle and one or more trailers;

package in relation to dangerous goods or other goods, means the complete product of the packing of the goods for transport, and consists of the goods and their packaging;

packaging of dangerous goods or other goods, means anything that contains, holds, protects or encloses the goods, whether directly or indirectly, to enable them to be received or held for transport or to be transported, including inner packaging, outer packaging, overpacks, large packaging, IBCs, MEGCs, tanks (including the tank of a tank vehicle), bulk and freight containers, drums, barrels, jerry cans, boxes and bags;

- (3) In regulation 4 in the definition of ***Competent Authorities Panel*** or ***CAP*** delete paragraph (a) and “and” after it and insert:

- (a) is a competent authority (or a representative of a competent authority) of this or a participating jurisdiction; and

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- (4) In regulation 4 in the definition of ***large packaging*** in paragraph (c)(i) delete “kgs; or” and insert:

kg; or

- (5) In regulation 4 in the definition of ***registered*** after “under” insert:

Commonwealth,

- (6) In regulation 4 in the definition of ***vehicle*** delete paragraph (a) and “or” after it and insert:

(a) a road vehicle, including a combination; or

5. Regulation 12 amended

Delete regulation 12(2)(b) and insert:

- (b) the load does not contain —
- (i) dangerous goods in any single receptacle with a capacity of more than 500 L; or
 - (ii) more than 500 kg of dangerous goods in any single receptacle;

6. Regulation 16 amended

Delete regulation 16(b) and insert:

- (b) a determination has been made under regulation 17(1)(a) in respect of the goods.

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7. Regulation 28 amended

Delete regulation 28(1)(a) and “or” after it and insert:

- (a) it satisfies the dangerous goods classification criteria set out, or referred to, in the ADG Code Part 2; or
 - (ba) it is named in column 2 of the Dangerous Goods List, irrespective of whether the name is —
 - (i) a generic name; or
 - (ii) a name described as “N.O.S”;
- or

8. Regulation 34 amended

Delete regulation 34(1)(c)(iv).

9. Regulation 38 replaced

Delete regulation 38 and insert:

38. Loads

For the purposes of these regulations —

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

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10. Regulation 46 replaced

Delete regulation 46 and insert:

46. Application of this Part

This Part applies in relation to the transport of dangerous goods if —

- (a) column 6 of the Dangerous Goods List specifies that a Special Provision in the ADG Code Chapter 3.3 applies to the dangerous goods; and
- (b) that Special Provision —
 - (i) prohibits the transport of the goods by road or rail; or
 - (ii) imposes a restriction on the way the goods are to be transported by road or rail.

11. Regulations 48A and 48B inserted

After regulation 47 insert:

48A. Duty on packers

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

- (a) that column 6 of the Dangerous Goods List specifies that a Special Provision in the ADG Code Chapter 3.3 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.

Penalty: a fine of \$5 000.

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48B. Duty on loaders

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

- (a) that column 6 of the Dangerous Goods List specifies that a Special Provision in the ADG Code Chapter 3.3 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.

Penalty: a fine of \$5 000.

12. Regulation 51 deleted

Delete regulation 51.

13. Regulation 53 amended

(1) In regulation 53:

(a) delete “Packaging” and insert:

(1) Packaging

(b) delete paragraphs (b) and (c) and “or” after each of them and insert:

(b) it does not meet any relevant standards or requirements specified by the ADG Code Part 4 or 6 (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 the ADG Code Part 4 or 6; or

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(2) At the end of regulation 53 insert:

- (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.

14. Regulation 56 amended

Delete regulation 56(1) and insert:

- (1) The Chief Officer may, on an application made in accordance with regulations 55 and 194, approve a design for a packaging for use in the transport of dangerous goods if satisfied that a packaging of that design —
- (a) will comply with, or is permitted by, the ADG Code Part 6; and
 - (b) satisfies all the relevant testing and inspection requirements set out in that Part.
- (2A) In determining whether packaging of a particular design satisfies any particular testing requirement, the Chief Officer may rely on any test certificate issued by a recognised testing facility that complies with regulation 58.

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15. Part 4 Divisions 4 to 8 replaced

Delete Part 4 Divisions 4, 5, 6, 7 and 8 and insert:

Division 4 — Offences relating to general packaging

62. Term used: general packaging

In this Division —

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

63. Duty on consignors

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 of the ADG Code Part 4.

Penalty: a fine of \$10 000.

64. Duty on packers

- (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.
- (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 of the ADG Code Part 4.

Penalty: a fine of \$5 000.

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65. Duty on loaders

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.

Penalty: a fine of \$5 000.

66. Duty on prime contractors and rail operators

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.

Penalty: a fine of \$10 000.

67. Duty on drivers

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.

Penalty: a fine of \$5 000.

Division 5 — Offences relating to other packaging

68. Term used: other packaging

In this Division —

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

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69. Duty on manufacturers of portable tanks, MEGCs or tank vehicles

- (1) A person who manufactures a portable tank or an MEGC for use in the transport of dangerous goods must attach a compliance plate to the tank or MEGC in accordance with the ADG Code Chapter 6.7.
- (2) Subregulation (1) does not apply to a person in relation to a portable tank if the ADG Code Chapter 6.7 permits 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 the ADG Code section 6.9.2.2.
Penalty: a fine of \$10 000.

70. Duty on owners of demountable tanks, portable tanks and MEGCs

The owner of a demountable tank, a portable 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.

Penalty: a fine of \$10 000.

71. Duty on consignors

- (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

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

Penalty: a fine of \$10 000.

72. Duty on packers

- (1) A person must not pack dangerous goods for transport in any other packaging if the person knows, or ought reasonably to know, that the packaging is unsuitable for the transport of the goods.
- (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 the ADG Code Part 4.

Penalty: a fine of \$5 000.

73. Duty on loaders

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.

Penalty: a fine of \$5 000.

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74. Duty on prime contractors and rail operators

- (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 of the ADG Code Part 4.
- (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 of the ADG Code Part 4.

Penalty: a fine of \$10 000.

75. Duty on drivers

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 of the ADG Code Part 4.

Penalty: a fine of \$5 000.

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16. Regulation 106 amended

Delete regulation 106(1) and (2) and insert:

- (1) A receptacle (other than a transport unit or an overpack) that contains dangerous goods and —
 - (a) has a capacity of more than 500 L; or
 - (b) contains more than 500 kg of dangerous goods,is ***appropriately marked*** if it is marked and labelled in accordance with the ADG Code Chapters 5.2 and 5.3.3.
- (2) A receptacle (other than an overpack) to which subregulation (1) does not apply that contains dangerous goods is ***appropriately marked*** if —
 - (a) it is marked and labelled in accordance with the ADG Code Chapter 5.2; and
 - (b) it is placarded in accordance with the ADG Code section 5.3.3.

17. Regulation 110 amended

Delete regulation 110(1)(a) and “or” after it and insert:

- (a) it contains —
 - (i) dangerous goods in a receptacle with a capacity of more than 500 L; or
 - (ii) more than 500 kg of dangerous goods in a receptacle;

or

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18. Regulation 113 amended

- (1) In regulation 113(1) after “goods” (first occurrence) insert:

on to a vehicle

- (2) In regulation 113(2) after “load” (first occurrence) insert:

on to a vehicle

- (3) In regulation 113(3) after “goods” (first occurrence) insert:

on to a vehicle

19. Regulation 123 amended

In regulation 123 after “applies” insert:

on to a vehicle

20. Part 8 replaced

Delete Part 8 and insert:

Part 8 — Stowage and restraint

126. Duty on consignors

- (1) A person must not consign for transport in or on a vehicle a load of dangerous goods that is a placard load if the person knows, or ought reasonably to know, that the goods or their packaging are not, or will not be,

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stowed, loaded and restrained in accordance with the ADG Code Chapter 8.1.

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

Penalty: a fine of \$5 000.

127. Duty on loaders

- (1) A person who loads a load of 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 the ADG Code Chapter 8.1.
- (2) A person who loads for transport in or on a vehicle dangerous goods that are in a transport unit must ensure that the transport unit is restrained in accordance with the ADG Code Chapter 8.2.

Penalty: a fine of \$3 000.

128. Duty on prime contractors and rail operators

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

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restrained in accordance with the ADG Code
Chapter 8.2.

Penalty: a fine of \$5 000.

129. Duty on drivers

- (1) A person must not drive a road vehicle transporting a load of dangerous goods that is a placard load if the person knows, or ought reasonably to know, that the goods or their packaging have not been stowed or loaded, or are not restrained, in accordance with the ADG Code Chapter 8.1.
- (2) A person must not drive a road vehicle transporting dangerous goods in a transport unit if the person knows, or ought reasonably to know, that the goods or their packaging are not restrained in accordance with the ADG Code Chapter 8.2.

Penalty: a fine of \$3 000.

21. Regulation 130 amended

- (1) In regulation 130 delete “This” and insert:
 - (1) This
- (2) At the end of regulation 130 insert:
 - (2) This Part does not apply to the transport of dangerous goods packed in limited quantities.

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22. Regulation 140 amended

- (1) In regulation 140(1) delete “defective.” and insert:

defective to the extent that it is not safe to use to transfer the goods.

- (2) Delete regulation 140(3).

23. Regulation 147 amended

In regulation 147 delete “engage in a bulk transfer of dangerous goods if —” and insert:

transport dangerous goods in a tank if —

24. Regulation 155 amended

- (1) In regulation 155(1) delete “train, from a depot or yard,” and insert:

train

- (2) Delete regulation 155(3) and insert:

(3) Subregulations (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 transport documentation for the goods is readily available elsewhere in the immediate vicinity of the depot, yard or operations.

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25. Regulation 161 amended

- (1) In regulation 161(1) delete “from a depot or yard”.
- (2) Delete regulation 161(3) and insert:
 - (3) Subregulations (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 operations.

26. Regulation 164 amended

Delete regulation 164(2) and insert:

- (2) A prime contractor must not use a road vehicle to transport a placard load if the prime contractor knows, or ought reasonably to know —
 - (a) that a fire extinguisher with which the vehicle is equipped under subregulation (1) has not been inspected or tested in accordance with —
 - (i) the ADG Code Part 12; and
 - (ii) AS 1851—2005, *Maintenance of fire protection systems and equipment*;

or

 - (b) that a portable warning device with which the vehicle is equipped under subregulation (1) has not been inspected or tested in accordance with the ADG Code Part 12; or
 - (c) that any fire extinguisher, portable warning device, or other equipment, with which the

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vehicle is equipped under subregulation (1) is
not in good repair or proper working order.

Penalty: a fine of \$10 000.

27. Regulation 165 amended

Delete regulation 165(2) and insert:

- (2) A person must not drive a road vehicle transporting a placard load if the person knows, or ought reasonably to know —
- (a) that a fire extinguisher with which the vehicle is equipped under subregulation (1) has not been inspected or tested in accordance with —
 - (i) the ADG Code Part 12; and
 - (ii) AS 1851—2005, *Maintenance of fire protection systems and equipment*;
 - or
 - (b) that a portable warning device with which the vehicle is equipped under subregulation (1) has not been inspected or tested in accordance with the ADG Code Part 12; or
 - (c) that any fire extinguisher, portable warning device, or other equipment, with which the vehicle is equipped under subregulation (1) is not in good repair or proper working order; or
 - (d) that any fire extinguisher, portable warning device, or other equipment, with which the vehicle is equipped under subregulation (1) is not stowed in accordance with the ADG Code Part 12.

Penalty: a fine of \$3 000.

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28. Regulation 171 amended

Delete regulation 171(1) and insert:

- (1) This regulation applies to a road vehicle transporting a load of dangerous goods if —
- (a) the load contains —
 - (i) dangerous goods in a receptacle with a capacity of more than 500 L; or
 - (ii) more than 500 kg of dangerous goods in a receptacle;
 - and
 - (b) the load contains dangerous goods of UN Division 2.1 or UN Class 3, 4 or 5 or that have a Subsidiary Risk of 2.1, 3, 4 or 5.1.

29. Regulation 178 amended

In regulation 178(4):

- (a) delete “the driver and”;
- (b) delete “each”;
- (c) delete paragraphs (e) and (f) and insert:
 - (e) what the driver believes to be the likely cause of the incident;
 - (f) what the prime contractor or rail operator believes to be the likely cause of the incident;

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30. Regulation 179 amended

Delete regulation 179(2) and (3) and insert:

- (2) A prime contractor or rail operator must not transport a load of dangerous goods that contains —
- (a) dangerous goods in a receptacle with a capacity of more than 500 L; or
 - (b) more than 500 kg of dangerous goods in a receptacle,

if a telephone advisory service is not available during the journey.

Penalty: a fine of \$10 000.

31. Regulation 194 amended

After regulation 194(3) insert:

- (4) An applicant who does not obey such a request within 21 days after the date on which it is made, or any longer period permitted by the Chief Officer, is to be taken to have withdrawn the application and is entitled to a refund of the fee.

32. Regulation 215 amended

Delete regulation 215(2) and insert:

- (2) Except as provided in subregulations (3) and (4), a road vehicle used to transport —
- (a) dangerous goods in a receptacle with a capacity of more than 500 L; or

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- (b) more than 500 kg of dangerous goods in a receptacle,

must be licensed under this Part to transport the goods.

33. Regulation 216 amended

Delete regulation 216(1) and insert:

- (1) Except as provided in subregulation (2), a person who drives a road vehicle transporting —
 - (a) dangerous goods in a receptacle with a capacity of more than 500 L; or
 - (b) more than 500 kg of dangerous goods in a receptacle,

must be licensed under this Part to drive the vehicle.

34. Regulation 257 amended

In regulation 257(1):

- (a) in paragraph (a)(i) delete “a container” and insert:

any packaging

- (b) delete paragraph (b) and insert:

- (b) the owner has an approval given under regulation 260 in relation to the use of the vehicle and is complying with all relevant conditions to which the approval is subject.

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35. Regulation 258 amended

In regulation 258(1):

- (a) in paragraph (a)(i) delete “a container” and insert:

any packaging

- (b) delete paragraph (b) and insert:

- (b) the prime contractor has an approval given under regulation 260 in relation to the use of the vehicle and is complying with all relevant conditions to which the approval is subject.

36. Regulation 272 replaced

Delete regulation 272 and insert:

272. Fees prescribed

The fees payable under these regulations are prescribed in the Table.

Table

Item	Fee for	Fee (\$)
1.	Approval or variation of approval (r. 194(1)(b))	260
2.	Application for, or for renewal of, a licence, for the term of the licence per year or part of a year —	
	(a) dangerous goods driver licence (r. 218(2)(e) and 223(2)(e))	20
	(b) dangerous goods vehicle licence (r. 230(4) and 233(3))	125

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37. Schedule 1 amended

In Schedule 1:

(a) delete items 5 to 19 and insert:

5.	Regulation 69(1)	600	3 000
6.	Regulation 69(3)	600	3 000
7.	Regulation 70	600	3 000
8.	Regulation 71(1)	600	3 000
9.	Regulation 71(2)	600	3 000
10.	Regulation 74(1)	600	3 000

(b) delete item 26 and insert:

26.	Regulation 127(1)	300	—
27A.	Regulation 127(2)	300	—

By Command of the Governor,

PETER CONRAN, Clerk of the Executive Council.