**DANGEROUS SUBSTANCES (TRANSPORT OF DANGEROUS GOODS) AMENDMENT BILL 1998**

**Legislative Assembly, 25 February 1998, pages 512-3**

Second reading

**The Hon. M.H. ARMITAGE (Minister for Government Enterprises)** obtained leave and introduced a Bill for an Act to amend the Dangerous Substances Act 1979. Read a first time.

The Hon. M.H. ARMITAGE: I move: That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

The Dangerous Substances Act provides for the keeping, handling, packaging, conveyance, use, disposal and quality of toxic, corrosive, flammable or otherwise harmful substances. This Bill concentrates on the transport of dangerous substances (commonly referred to as ‘dangerous goods’) and it offers many advantages to South Australian industry in terms of consistent requirements based on national and international standards.

Regulations under the Dangerous Substances Act dealing with transport commenced in South Australia in October 1981. These regulations applied the Australian Code for the Transport of Dangerous Goods By Road and Rail (ADG Code), a national document which is now used by all States and Territories of Australia. This Code has been revised several times and has served South Australia and the nation well as a common basis for State Regulation and a focal point for uniform and mutually acceptable state wide decisions on matters which affect the transport of dangerous goods.

The transport industry, in its widest application, plays a central part in the efficiency of our industries and our national and international competitiveness. For these reasons, agreements were reached between state governments and the federal government regarding micro economic reform for the transport industry. The National Road Transport Commission has been developing nationally uniform road transport law since 1992, under the Heavy Vehicle Agreement signed by Heads of Government. In South Australia the Minister for Transport has supervised these developments through the Australian Transport Advisory Council and the Ministerial Council on Road Transport.

In relation to dangerous goods, a uniform regulatory regime based upon a comprehensive set of regulations and a new 6th edition of the Australian Dangerous Goods (ADG) Code has been drafted at national level with extensive consultation with all interest groups.

In addition to national road transport reform, rail transport has also been reviewed (by other national groups) and private rail companies now operate rail transport systems. Although the National Road Transport Commission has responsibility for road transport, rail issues are included in this uniform regulatory regime.

The requirements of this Bill are drawn from the Commonwealth Road Transport Reform (Dangerous Goods) Act 1995 and it provides South Australia with a nationally consistent scheme which will support transport regulations and the ADG Code. It recognises that the South Australian Parliament should control South Australian legislation and the provisions of the Commonwealth Act have been applied in this Bill in a manner best suited to South Australia. For example, the South Australian Expiation of Offences scheme will be used in preference to the Commonwealth scheme but penalty levels are to the same as the Commonwealth in order to preserve national consistency.

Transport requirements are part of a broader range of issues addressed within the Dangerous Substances Act. Accordingly, administrative issues (such as appointment of officers and power of delegation) and enforcement matters (such as expiable offences, notices to remedy non compliance or a dangerous situation) will be consistent with the Commonwealth requirements but applied in this Bill to all Dangerous Substances issues. This ensures that officers authorised under the Act may deal with storage, handling, autogas and transport matters under one Act utilising one set of provisions. This simplifies administrative process, training, removes duplication and ensures efficient administration of the Act.

A further example of the application of the Commonwealth Act provisions in a manner best suited to South Australia may be found in the regulation making provisions. Certain of the regulation powers are only required for transport and these are separate in the Bill. Other powers are more general and are incorporated into the main regulation making powers within the Dangerous Substances Act. One extension issue is included. For transport, prohibition powers are available to identify and control substances which are too dangerous to transport and to allow the courts to prohibit a person from being involved in the activity of dangerous goods transport. No such equivalent power currently exists for storage and handling. An equivalent provision for storage and handling is included in the Bill. This provision does not allow an officer to prohibition a substance, but will allow the Minister to take this action should it be required in the future.

Key features of the dangerous goods transport reform include: - a national licensing scheme for drivers and vehicles: - clearer duties and responsibilities for all parties: - greater legal liability on prime contractors and consignors: - compulsory training for all dangerous goods tasks: - rights for industry to appeal decisions: - national coordination of exemptions, approvals and other administrative decisions.

The reforms proposed by this measure will not apply to certain activities covered by other specific or special legislation. In particular, the new regulations will not apply to the transport of any radioactive substance or radioactive apparatus that is subject to the operation and control of the Radiation Protection and Control Act 1982.

In conclusion, this Bill gives effect to uniform requirements for the transport of dangerous goods by road and rail. The development of these requirements is supported by intergovernmental agreements and extensive national consultation was undertaken during development.

This Bill will ensure that safety issues in dangerous goods transport continue to be addressed in a manner consistent with international developments. It will establish legislation in a manner best suited to South Australia but it will apply the national perspective in a manner which will allow the transport industry to operate efficiently and effectively in South Australia, across Australia and internationally.

Explanation of Clauses

The provisions of the Bill are as follows:

*Clause 1: Short title*

This clause is formal.

 *Clause 2: Commencement*

The measure will be brought into operation by proclamation.

*Clause 3: Amendment of long title*

The long title will now make specific reference to the transporting of dangerous substances (in addition to the concept of ‘conveyance’).

*Clause 4: Amendment of s. 5—Interpretation*

It will be necessary to revise various definitions, or to introduce new definitions, in connection with the enactment of this measure. Many of the definitions will provide consistency with the Commonwealth legislation on Road Transport Reform. The concept of ‘transport’ is to be introduced, separate from ‘conveyance’. It will be possible to apply the Commonwealth Acts Interpretation Act 1901 in connection with the adoption of the Road Transport Reform package in prescribed circumstances.

*Clause 5: Substitution of s. 6*

It will be possible, in prescribed circumstances, to extend the application of the Act to the Crown in its other capacities (so far as the legislative power of the State extends).

*Clause 6: Substitution of Part II*

The introduction of the Road Transport Reform package has prompted a revision of the Administration provisions of the Act. The role of the Director under the Act is now to be undertaken by one or more ‘Competent Authorities’ appointed by the Minister. The term ‘inspector’ is to be replaced by ‘authorised officer’ (consistent with the Road Transport Reform package). Other provisions have been up-dated.

*Clause 7: Substitution of s. 12*

The general duty of care under the Act has been revised, and the penalties have been increased to provide consistency with the comparable provision in the Road Transport Reform package.

*Clause 8: Amendment of s. 12a—Duty in relation to plant*

*Clause 9: Amendment of s. 15—Licence to keep dangerous substances*

*Clause 10: Amendment of s. 16—Term of licences*

 *Clause 11: Amendment of s. 19—Licence to convey dangerous substances*

*Clause 12: Amendment of s. 20—Term of licences*

*Clause 13: Amendment of s. 21—General ground for not granting or renewing licences*

*Clause 14: Amendment of s. 22—Surrender, suspension and cancellation of licences*

These provisions all contain consequential amendments.

*Clause 15: Insertion of new Parts 3AA and 3AAB*

This clause provides for the insertion of two new Parts into the Act. New Part 3AA is necessary in order to allow the Road Transport Reform package, and especially the relevant regulations, rules and codes under that package, to be adopted in South Australia. The result will be a new Part in the Act that specifically deals with the transport of dangerous goods under the national scheme. New section 23AA is modelled on the regulation-making powers in the Commonwealth Act. New section 23AB replicates various offence provisions in the Commonwealth Act (with the same levels of penalties). New section 23AAC replicates section 45 of the Commonwealth Act. New section 23AAD has the same effect as section 41 of the Commonwealth Act. New Part 3AAB provides for up-dated powers of inspection and operation for authorised officers. The intention is to allow authorised officers to act in a manner comparable to authorised officers in other jurisdictions, but under provisions that are consistent with other legislation that applies in this State (e.g., the Environment Protection Act 1993).

*Clause 16: Substitution of Part IIIA*

The introduction of the Road Transport Reform package has prompted a review of Part IIIA of the Act. It has been decided to combine the concept of ‘improvement notice’ with the concept of ‘prohibition notice’ to provide easier administration and control in cases where action must be taken under the legislation. Other associated sections have also been revised.

*Clause 17: Substitution of ss. 24 and 24a*

The exemption and appeal provisions must also be revised. A Competent Authority will be required, in deciding whether to grant an exemption from a scheme that involves the uniform application of laws on a national basis, to take into account any effect that the exemption would have on the operation of that scheme. Notice of an exemption will need to be given in the Gazette in certain cases (consistent with the national scheme). Notice will also need to be given to corresponding authorities in prescribed circumstances. The appeal provisions are also to be adjusted to accommodate the scheme under the Road Transport Reform package.

*Clause 18: Amendment of s. 25—Evidentiary provisions*

These amendments provide for various evidentiary presumptions and provisions in view of the inclusion of ‘dangerous goods’ under the Act.

*Clause 19: Insertion of ss. 25A and 25B*

New section 25A introduces the ability to approve codes of practice for the purposes of the Act. The scheme is based on comparable provisions in the Occupational Health, Safety and Welfare Act 1986. Section 25B relates to the ability to use approved codes of practice in proceedings under the Act.

*Clause 20: Insertion of s. 28A*

New section 28A will allow the recovery of certain costs relating to the institution of proceedings and the investigation of an offence from a convicted person, in a manner similar to section 43 of the Commonwealth Act.

*Clause 21: Amendment of s. 29—Proceedings for offences*

These amendments provide for the recasting of section 29 of the Act to provide consistency with similar provisions in other Acts in view of new arrangements associated with the commencement of proceedings for offences that are expiable, and the provisions of the Summary Procedure Act 1921.

*Clause 22: Insertion of ss. 29B, 29C and 29D*

Express provision is to be made with respect to the protection of authorised officers or other persons engaged in the administration of the Act from personal liability. (Liability will lie with the Crown.) Furthermore, in a manner similar to section 49 of the Commonwealth Act, no personal liability will attach to a person for an honest act undertaken to assist with an emergency or accident involving a dangerous substance. New section 29D will allow the Minister to prohibit a person from engaging in an activity involving a dangerous substance, or using a dangerous substance in a particular manner, or having a dangerous substance in his or her custody, possession or control.

*Clause 23: Amendment of s. 30—Regulations*

It is necessary to make various changes to the regulation-making powers under the Act.

*Clause 24: Insertion of s. 31*

New section 31 replicates section 34 of the Commonwealth Act so as to allow the Minister to make various orders consistent with the scheme that applies under the National Road Transport Commission Act 1991 of the Commonwealth.

*Clause 25: Further amendments of principal Act Various consequential or statute law revision amendments are also to be made to the Act.*

*Clause 26: Renumbering Due to the extensive number, and nature, of these amendments, the sections and Parts of the Act are to be renumbered in consecutive order*.

Schedule 1 All penalties under the Act have been reviewed on account of the introduction of various penalties under the Road Transport Reform package and to bring the penalties in line with general policy.

Schedule 2 Various statute law revision amendments will be made to the Act, especially to ensure gender neutral language and to remove antiquated language.

Schedule 3 Various transitional provisions are included to ensure smooth transition to new terminology and arrangements on the enactment of this measure.

Ms KEY secured the adjournment of the debate.