

WESTERN AUSTRALIA

ANNO QUINQUAGESIMO OCTAVO

VICTORIÆ REGINÆ

No. 12

An Act to amend the Law relating to Explosive Substances.

[Assented to 1st November, 1894.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as 'The Explosive Substances Act, 1894.'

The Explosive Substances Act, 1894

2. In this Act, unless the context otherwise requires,—

Interpretation

The expression 'explosive substance' shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement, or materials used or intended to be used or adapted for causing or aiding in causing any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.

The expression 'Attorney General' means Her Majesty's Attorney General for the Colony of Western Australia, or in the case of his inability, or of a vacancy in the office, the Crown Solicitor for the said Colony.

3. Any person who unlawfully and maliciously causes, by any explosive substance, an explosion of a nature likely to endanger life, or to cause serious injury to property, shall, whether any injury to person or property has been actually caused or not, be guilty of felony, and, on conviction, be liable to penal servitude for life, or for any term not less than three years, or to imprisonment, with or without hard labour, for any term not exceeding two years.

Punishment for causing explosion likely to endanger life or property

4. Any person who, within or (being a subject of Her Majesty) without Her Majesty's Dominions, unlawfully and maliciously

Punishment for attempt to cause explosion, or for making or keeping explosives with intent to endanger life or property

(a) Does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in the Colony of Western Australia of a nature likely to endanger life, or to cause serious injury to property; or

(b) Makes, or has in his possession or under his control, any explosive substance with intent by means thereof to endanger life or cause serious injury to property in the Colony of Western Australia, or to enable any other person by means thereof to endanger life or cause serious injury to property in the Colony of Western Australia,

shall, whether any explosion does or does not take place, and whether any injury to person or property has been actually caused or not, be guilty of felony, and, on conviction, shall be liable to penal servitude for a term not exceeding twenty years, or to imprisonment with or without hard labour for a term not exceeding two years, and the explosive substance shall be forfeited.

5. (1) Any person who makes, or knowingly has in his possession or under his control, any explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it, or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it, or had it in his possession or under his control for a lawful object, be guilty of felony, and on conviction shall be liable to penal servitude for a term not exceeding fourteen years, or to imprisonment for a term not exceeding two years, with or without hard labour, and the explosive substance shall be forfeited.

Punishment for making, or possession of explosives under suspicious circumstances

(2) In any proceeding against any person for a crime under

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this section such person and his wife, or husband, as the case may be, may, if such person thinks fit, be called, sworn, examined, and cross-examined as an ordinary witness in the case.

Punishment of
accessories

6. Any person who, within or (being a subject of Her Majesty) without Her Majesty's dominions, by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever procures, counsels, aids, abets, or is accessory to the commission of any crime under this Act shall be guilty of felony, and shall be liable to be tried and punished for that crime as if he had been guilty as a principal.

Inquiry by
Attorney General
and apprehension
of absconding
witnesses

7. (1) Where the Attorney General has reasonable ground to believe that any crime under this Act has been committed, he may order an inquiry under this section, and thereupon any Justice of the Peace, who is authorised in that behalf by the Attorney General, may, although no person may be charged before him with the commission of such crime, sit at a Police Court or Petty Sessional Court House, or police station, and examine on oath concerning such crime any witness appearing before him, and may take the deposition of such witness, and if he see cause may bind such witness by recognizance to appear and give evidence at a Court of Petty Sessions and on a day to be named in such recognizance, or when called upon within three months from the date of such recognizance, and the law relating to the compelling of the attendance of a witness before a Justice of the Peace, and to a witness attending before a Justice of the Peace and required to give evidence concerning the matter of an information or complaint, shall apply to compelling the attendance of a witness for examination, and to a witness attending under this section.

(2) A witness examined under this section shall not be excused from answering any question on the ground that the answer thereto may criminate, or tend to criminate himself; but any statement made by any person in answer to any question put to him on any examination under this section shall not, except in the case of an information or other criminal proceeding for perjury, be admissible in evidence against him in any proceeding, civil or criminal.

(3) A Justice of the Peace who conducts the examination under this section of a person concerning any crime shall not take part in the committing for trial of such person for such crime.

(4) Whenever any person is bound by recognizance to give evidence before Justices of the Peace, or any criminal court, in respect of any crime under this Act, any Justice of the Peace, if he sees fit, upon information being made in writing, and upon oath that such person is about to abscond, or has absconded, may issue his warrant for the arrest of such person, and if such person is arrested any Justice of the Peace, being satisfied that the ends of justice would otherwise be defeated, may commit such person to prison until the time at which he is bound by such recognizance to give evidence, unless in the meantime he produces sufficient sureties: Provided that any person so arrested shall be entitled, on demand, to receive a copy of the information upon which the warrant of his arrest was issued.

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8. (1) If any person is charged before a Justice of the Peace with any crime under this Act, no further proceeding shall be taken against such person without the consent of the Attorney General, except such as the Justice of the Peace may think necessary by remand, or otherwise, to secure the safe custody of such person.

No prosecutions except by leave of Attorney General. Procedure and saving

(2) In framing an information the same criminal act may be charged in different counts as constituting different crimes under this Act, and upon the trial of any such information the prosecutor shall not be put to his election as to the count on which he must proceed.

(3) For all purposes of and incidental to arrest, trial, and punishment, a crime for which a person is liable to be punished under this Act when committed out of this Colony shall be deemed to have been committed in the place in which such person is apprehended or is in custody.

(4) This Act shall not exempt any person from any information or proceeding for a crime or offence which is punishable at common law, or by any Act of Parliament other than this Act, but no person shall be punished twice for the same criminal act.

9. (1) Sections thirty-one, thirty-two, and thirty-three of 'The Explosives Act, 1885,' shall apply in like manner as if a crime or forfeiture under this Act were an offence or forfeiture under 'The Explosives Act, 1885.'

Search for and seizure of explosive substances
49 Vic., No. 16

(2) Where the master or owner of any vessel has reasonable cause to suspect that any dangerous goods or goods of a dangerous nature which, if found, he would be entitled to throw overboard in pursuance of 'The Merchant Shipping Act, 1873,' are concealed on board his vessel, he may search any part of such vessel for such goods, and for the purposes of such search may, if necessary, break open any box, package, parcel, or receptacle on board the vessel; and such master or owner, if he finds any such dangerous goods or goods of a dangerous nature, shall be entitled to deal with the same in manner provided by the said Act, and if he do not find the same he shall not be subject to any liability, civil or criminal, if it appears to the tribunal before which the question of his liability is raised that he had reasonable cause to suspect that such goods were so concealed as aforesaid.

36 & 37 Vic., c. 58

10. (1) Where a Court before whom a person is convicted of an offence against 'The Explosives Act, 1885,' has power to forfeit any explosive owned by or found in the possession of or under the control of such person, the Court may, if it think it just and expedient, in lieu of forfeiting such explosive, impose upon such person, in addition to any other penalty or punishment, a penalty not exceeding such sum as appears to the Court to be the value of the explosive so liable to be forfeited.

Supplemental provisions as to forfeiture of explosive

(2) Where any explosive, or ingredient of an explosive, is alleged to be liable under the said Act to be forfeited, any information or complaint may be laid against the owner of such explosive or ingredient for the purpose only of enforcing such forfeiture, and where the owner is unknown or cannot be found, any Court of Summary Jurisdiction may cause a notice to be advertised stating that, unless cause is shown to the contrary at the time and place

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named in the notice, such explosive will be forfeited; and at such time and place the Court, after hearing the owner or any person on his behalf (who may be present), may order all or any part of such explosive or ingredient to be forfeited.

Application of
penalties and
disposal of
forfeitures

11. (1) All penalties imposed in pursuance of 'The Explosives Act, 1885,' by a Court of Summary Jurisdiction upon the prosecution of an inspector, sub-inspector, sergeant, or other officer of police of equal or superior rank shall, notwithstanding anything in any other Act, be paid into the Treasury in such manner as may be from time to time directed by the Colonial Treasurer.

(2) Any explosive or ingredient forfeited in pursuance of the said Act may be sold, destroyed, or otherwise disposed of in such manner as the Court declaring the forfeiture, or the Colonial Treasurer, may direct, and the proceeds of any such sale or disposal shall be paid, applied, and accounted for in like manner as penalties under this Act.

(3) The receptacle containing any such explosive or ingredient may be forfeited, sold, destroyed, or otherwise disposed of in like manner as the contents thereof.

(4) The provisions of section thirty-one of the said Act with respect to an explosive or ingredient of an explosive seized in pursuance of that Act, and to the officer seizing, removing, detaining, keeping, or conveying, or otherwise dealing with the same, shall apply to any explosive and ingredient declared by any Court to be forfeited, and to the officer removing, detaining, keeping, conveying, selling, destroying, or otherwise disposing of the same.

(5) The Court declaring the forfeiture, or the Colonial Treasurer directing the sale or other disposal of any forfeited explosive or ingredient, and the receptacles thereof, may require the owner of such explosive or ingredient to permit the use of any ship, boat, or carriage containing such explosive or ingredient, for the purpose of such sale or disposal, upon payment of a reasonable compensation for the same to be determined in case of dispute by a Court of Summary Jurisdiction; and where the explosive or ingredient is directed to be destroyed, the owner and the person having possession of such explosive or ingredient, and the owner and master of the ship, boat, or carriage containing the same, or some or one of them, shall destroy the same accordingly; and if the Court or Colonial Treasurer so order, the ship, boat, or carriage may be detained until the same is so destroyed; and if the Colonial Treasurer is satisfied that default has been made in complying with any such direction by him or a Court, and that the detention of the ship, boat, or carriage will not secure the safety of the public, and that it is impracticable, having regard to the safety of the public or of the persons employed in such destruction, to effect the same without using such ship, boat, or carriage, or otherwise dealing with such ship, boat, or carriage in like manner as if it were a receptacle for an explosive forfeited under the said Act, the Colonial Treasurer may direct such ship, boat, and carriage, or any of them, to be and the same may accordingly be so used or dealt with.

ALEX. C. ONSLOW,
GOVERNOR'S DEPUTY.