

EXPLOSIVES AND DANGEROUS GOODS AMENDMENT ACT

No. 28 of 1990

AN ACT to amend the *Explosives and Dangerous Goods Act*
1961.

[Assented to 27 September 1990.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Explosives and Dangerous Goods Amendment Act 1990*.

Commencement

2. The provisions of this Act shall come into operation on such day as is, or days as are, respectively, fixed by proclamation.

Principal Act

3. In this Act the *Explosives and Dangerous Goods Act 1961* is referred to as the principal Act.

[*Approved for Reprint 5 September 1979 and amended by Acts Nos. 58 of 1981, 87 of 1982, 68 of 1984 and 32 of 1986.]

Section 7 amended

4. Section 7 of the principal Act is amended in subsection (1)—

(a) by deleting the definition of “Chief Inspector” and substituting the following definition—

“ “Chief Inspector” means the person holding or acting in the office of chief inspector for the purposes of section 9 under the designation of Chief Inspector of Explosives and Dangerous Goods or such other designation as applies to that office under the *Public Service Act 1978*; ”; and

(b) by inserting after the definition of “master” the following definition—

“ “pipeline” means a pipe or system of pipes, including any branch thereof, used or intended to be used for the conveyance of dangerous goods to or from licensed premises, both internal and external to the licensed premises, and includes all coatings, works, fittings, pumps, appliances, protection, supports and structures used in connection with a pipeline; ”.

Section 9 repealed and a section substituted

5. (1) Section 9 of the principal Act is repealed and the following section substituted—

Chief Inspector and inspectors

“ 9. There shall be appointed under and subject to the *Public Service Act 1978* a chief inspector under the designation of Chief Inspector of Explosives and Dangerous Goods or such other designation as applies to that office under that Act and such other inspectors and other officers as are necessary for the purposes of the administration of this Act. ”.

(2) Any person appointed to and holding an office under section 9 of the principal Act as in force before the day that this section comes into operation shall, subject to the *Public Service Act 1978*, continue in that office after that day as though that person were appointed under and subject to the *Public Service Act 1978*.

Section 14 amended

6. Section 14 of the principal Act is amended—

(a) in subsection (1) by deleting “The Governor may from time to time by order in council” and substituting the following—

“ The Minister may from time to time by order ”;

(b) in subsection (2)—

(i) by deleting “Governor” and substituting the following—

“ Minister ”, and

(ii) by deleting “in council”.

(c) in subsection (3) by deleting “Notice of any order in council” and substituting the following—

“ An order ”;

(d) in subsection (4)—

(i) in paragraph (a), by deleting “in council classifying explosives”; and

(ii) by deleting “or” after paragraph (a) and substituting the following—

“ and ”;

and

(e) in subsection (5)—

(i) by deleting “in council” wherever occurring; and

(ii) by inserting after “subsequent order” the following—

“ published in the *Government Gazette* ”.

Section 42 amended

7. Section 42 of the principal Act is amended—

(a) in subsection (2)—

(i) by deleting paragraph (b); and

(ii) by deleting “, or, in the case of an order under paragraph (a) of this subsection,” and substituting the following—

“ or ”;

(b) by inserting after subsection (2) the following subsection—

“ (2a) The Minister may from time to time by order published in the *Government Gazette* declare any substance to be dangerous goods and classify that substance by reference to the system specified in the Third Schedule. ”;

(c) in subsections (3) and (4), by deleting “(2)” wherever occurring and substituting in each case the following—

“ (2a) ”;

(d) in subsection (5), by deleting “the Governor may, in any order in council made under subsection (2) of this section” and substituting the following—

“ the Minister may in any order made under subsection (2a) ”;

and

(e) by inserting after subsection (6) the following subsection—

“ (7) An order made by the Minister under subsection (2a) may be amended or cancelled by a subsequent order published in the *Government Gazette*. ”.

Section 43 amended

8. Section 43 of the principal Act is amended by repealing subsections (2) and (3).

Section 45 repealed and sections substituted

9. Section 45 of the principal Act is repealed and the following sections are substituted—

Application for licence

“ 45. (1) A person shall not—

- (a) lay out for a building or commence or proceed with a building for the purposes of the storage of dangerous goods;
- (b) in respect of a structure of a building already erected, amend, alter, extend or enlarge, or commence or proceed with the amendment, alteration, extension or enlargement of the structure of any building used or proposed to be used for the purposes of the storage of dangerous goods; or
- (c) use, or permit the use of, any premises for the purposes of the storage of dangerous goods,

in excess of the limits prescribed by the regulations in relation to the class of dangerous goods in question unless he or she has made an application to and obtained a licence for that purpose from the Chief Inspector in accordance with the regulations.

(2) A person who contravenes subsection (1) commits an offence.

(3) The provisions of this section are in addition to the provisions of any other written law.

Issue of licence

45A. (1) The Chief Inspector may at his discretion issue a licence for the purpose specified in an application made under section 45 (1) or may refuse to issue the licence or defer making any decision on the application.

(2) The Chief Inspector may request a person making an application under section 45 (1) to furnish such further information as the Chief Inspector requires.

Chief Inspector may impose conditions etc.

45B. (1) The Chief Inspector may impose such terms, conditions, restrictions and prohibitions with respect to a licence as the Chief Inspector may see fit to impose in the interests of safety of life and property.

(2) The Chief Inspector may amend or cancel any term, condition, restriction or prohibition imposed on a licence under subsection (1).

Chief Inspector may give directions

45C. (1) The Chief Inspector may from time to time give directions with respect to any premises on which dangerous goods are stored or proposed to be stored for the purposes of ensuring public safety and for the safety of any occupants in or on those premises.

(2) Without derogating from the generality of subsection (1) directions given under that subsection may include—

- (a) the preparation and implementation of a hazards control plan;
- (b) the implementation of such measures as are specified by the Chief Inspector for the purposes of ensuring that the hazards control plan referred to in paragraph (a) is tested from time to time as specified by the Chief Inspector;
- (c) the training to be given to persons occupying or employed on the premises; and
- (d) such other matters as in the opinion of the Chief Inspector are conducive to safety. ”.

Section 46D inserted

10. After section 46C of the principal Act the following section is inserted—

Pipelines

“ **46D.** (1) Regulations may provide for the licensing by the Chief Inspector of the construction of pipelines carrying dangerous goods or dangerous goods of a prescribed kind or in a prescribed quantity, and prohibiting the use of such a pipeline unless the pipeline is licensed in accordance with the regulations and prescribing or authorizing the Chief Inspector to determine, subject to the approval of the Minister, the fees payable in relation to the grant or renewal of a licence under this subsection.

(2) The Chief Inspector may refuse to issue a licence for the purposes of subsection (1), or issue such a licence subject to such terms and conditions as he may see fit to impose, in the interests of public safety.

(3) A licence issued under this section is not transferable without the approval of the Chief Inspector.

(4) Regulations may provide for the construction, maintenance, re-laying, repair, renewal, extension and alteration of pipelines carrying dangerous goods or dangerous goods of a prescribed kind.

(5) A person who constructs, re-lays, renews or effects any structural repairs, alterations or extensions to a pipeline that is not in accordance with the regulations or the terms and conditions of a licence issued in relation to the pipeline, commits an offence against this Act. ”.

Section 48 amended

11. Section 48 of the principal Act is amended in subsection (3) by deleting “two hundred dollars” and substituting the following—

“ \$5 000 ”.

Section 51 amended

12. Section 51 of the principal Act is amended in subsection (1)—

- (a) by deleting “or has failed to comply with a lawful requirement of an inspector,” and substituting the following—

“ has failed to comply with a lawful requirement of an inspector or has failed to comply with or has contravened a direction given under section 45C, ”;

and

- (b) by inserting after “requirement” the following—

“ or direction, as the case may be, ”.

Section 54A inserted

13. After section 54 of the principal Act the following section is inserted—

Special situations

“ **54A.** (1) Where the Minister is satisfied on the report of the Chief Inspector that—

- (a) the safety of persons or property, or the environment, is being harmed or is likely to be harmed by a situation resulting from explosion, fire, or the presence of dangerous goods; and
- (b) this Act (other than this provision) does not make adequate provision for protecting the safety of persons or property likely to be affected by that situation, or for protecting the environment in so far as it is likely to be affected by that situation,

the Minister may in writing, give such directions and take such action, as subject to subsection (2), the Minister considers necessary to control and eliminate hazards associated with the situation.

(2) Any direction given under subsection (1) may specify terms and conditions to which the authority given by the direction is to be subject.

(3) Any direction given under subsection (1) unless earlier revoked remains in force until the expiration of the period of 14 days after the date of the direction.

(4) Any costs or expenses incurred by the Minister with respect to controlling or eliminating a special situation referred to in subsection (1) may be recovered by the Minister in a court of competent jurisdiction from any person whose act or omission caused the special situation.

(5) A certificate signed or purporting to be signed by the Minister, without proof of the signature of the Minister, is in any legal proceedings evidence of a direction given under subsection (1).

(6) A person who fails to comply with any direction given under this section or hinders or obstructs the taking of any action in pursuance of such a direction, commits an offence.

Penalty: \$50 000 or imprisonment for 6 months or both. ”.

Section 55A inserted

14. After section 55 of the principal Act the following section is inserted—

Assistance in emergencies or accidents

“ 55A. (1) Notwithstanding anything in this Act or any other Act or law a person who in good faith and without any fee, charge or other reward assists or attempts to assist in any circumstances in which an emergency or an accident involving explosives or dangerous goods occurs or is likely to occur is not liable in any legal proceedings for any reasonable act taken by him or her—

- (a) for the purposes of preventing the emergency or accident from occurring; or
- (b) in connection with assisting in dealing with any fire, explosion, spillage or damage arising from the emergency or accident.

(2) Subsection (1)—

- (a) does not apply to a person whose act was wholly or partly the cause of the occurrence or likely occurrence referred to in that subsection;
- (b) applies to any State department or instrumentality notwithstanding that the department or instrumentality requires payment in relation to any service provided by the department or instrumentality in connection with any occurrence or likely occurrence referred to in that subsection. ”.

Section 56 amended

15. Section 56 of the principal Act is amended in subsection (2)—

- (a) by deleting “two thousand dollars” in paragraph (a) and substituting the following—

“ \$50 000 ”; and
- (b) by deleting “two hundred dollars” in paragraph (b) and substituting the following—

“ \$5 000 ”.

Sections 61A and 61B inserted

16. After section 61 of the principal Act the following sections are inserted—

Affidavit evidence

- “ **61A.** (1) Where a complaint is made of an offence under this Act and a summons appointing the time and place for the hearing and determination of the complaint is duly served on the defendant at least 28 days before that time, the summons may be accompanied by—
 - (a) copies of affidavits of evidence in support of the matters alleged in the complaint; and

(b) a notice in the prescribed form advising the defendant that he or she may, by election in writing in the prescribed form (copies of which form shall be attached to the notice) delivered by post or otherwise to the complainant and also to the clerk of petty sessions at the place so appointed not later than 21 days before the time so appointed, elect to appear or not on the hearing of the complaint but that if he or she does not so appear the Court may proceed—

(i) to hear and determine the complaint in his or her absence;

(ii) to permit those affidavits to be tendered in evidence; and

(iii) to determine the complaint on such particulars in the affidavits in support of the matters alleged in the complaint as would, under the laws of evidence apart from this section, be admissible if given orally before the Court, and not on any other particulars,

(which in this section and section 61B is referred to as the alternative procedure).

(2) Where the defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in subsection (1) and does not appear on the hearing of the complaint, whether or not he or she has, pursuant to that subsection, elected to do so, the Court may use the alternative procedure.

(3) Where the defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in subsection (1) and elects, pursuant to that subsection, not to appear on the hearing of the complaint, or makes no election at all pursuant to that subsection, but does appear at the time and place appointed in the summons, the Court shall, on the application of the complainant, adjourn the hearing of the

complaint for at least such time as is shown to the satisfaction of the Court to be necessary to enable the complainant to proceed otherwise than by the alternative procedure.

(4) For the purposes of this section an affidavit of evidence in support of the matters alleged in a complaint may be taken by, and made and sworn before, any magistrate, justice, or clerk of petty sessions appointed under section 25A of the *Justices Act 1902*, or Commissioner for taking Affidavits appointed under section 175 of the *Supreme Court Act 1935*.

**Proof of prior convictions when
complaint proceeds on affidavit evidence**

61B. (1) Where a defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in section 61A and it is alleged that he or she has been previously convicted of an offence, the summons may also be accompanied by a copy of a separate document in the prescribed form signed by the complainant setting out particulars of the alleged prior convictions.

(2) The document setting out the alleged prior convictions shall be endorsed with a notice in the prescribed form advising the defendant that if—

- (a) he or she does not appear on the hearing of the complaint to which the summons refers; and
- (b) he or she is convicted of the offence alleged in that complaint,

that separate document shall be admissible evidence that he or she was convicted of the offences alleged in that separate document, and of the particulars relating to the convictions set out in it.

(3) Where a defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in section 61A (1) and by a copy of a separate document as mentioned in subsections

(1) and (2) of this section and does not appear on the hearing of the complaint to which the summons refers and the Court uses the alternative procedure, the Court may receive that separate document as evidence that the defendant was convicted of the offences alleged in that separate document and of the particulars relating to the convictions set out in it, but the fact that a copy of the separate document was served on the defendant shall not be communicated to the Court or any member of the Court unless and until the defendant has been convicted of the offence alleged in that complaint, if the disclosure of the prior convictions alleged in the separate document is not admissible under the laws of evidence apart from this section.

(4) Where a defendant is duly served with a summons accompanied by copies of affidavits and a notice and copies of a form of election as mentioned in section 61A (1) and by a copy of a separate document as mentioned in subsections (1) and (2) of this section and he or she appears on the hearing of the complaint to which the summons refers—

- (a) the fact that a copy of the separate document was served on the defendant shall not be communicated to the Court or any member of the Court unless and until the defendant has been convicted of the offence alleged in that complaint, if the disclosure of the prior convictions alleged in the separate document is not admissible under the laws of evidence apart from this section; and
- (b) the separate document shall not be tendered in evidence without the consent of the defendant, if the separate document is not admissible under the laws of evidence apart from this section.

(5) Without in any way limiting the generality of the provisions of the law with respect to the re-hearing of complaints it is hereby declared that, where evidence of prior convictions is tendered pursuant to the provisions of this section, the Court may set aside on such terms as to costs or otherwise as the Court thinks just any conviction or order if it has reasonable grounds to believe that the document tendered in evidence was not in fact brought to the notice of the defendant or that the defendant was not in fact convicted of the offences as alleged in the document. ”.

Section 62 amended

17. Section 62 of the principal Act is amended—

(a) in subsection (2) (r)—

(i) by deleting “two thousand dollars” and substituting the following—

“ \$50 000 ”; and

(ii) by deleting “two hundred dollars” and substituting the following—

“ \$5 000 ”;

(b) by inserting after subsection (4) the following subsections—

“ (4a) Without affecting the generality of subsection (3) regulations adopting a code—

(a) may adopt all or any part of a code;

(b) may adopt a code as amended by the regulations;

(c) may adopt a code as set out in the adopted code as amended from time to time;

(d) may provide that any matter or thing referred to in the adopted code shall conform with any code, standard, or requirement specified in the adopted code as set out in the code, standard or requirement so referred to as amended from time to time;

(e) may contain such incidental, supplementary, savings and transitional provisions as are necessary or convenient.

(4b) The Chief Inspector—

(a) shall cause a copy of every adopted code and every code, standard or requirement specified in the adopted code to be available for inspection by members of the public at the office of the Chief Inspector without charge during normal office hours; and

- (b) may cause copies of every code adopted in the regulations and every code, standard or requirement referred to in a code so adopted to be available for the public on payment of such charge as may be imposed by the Chief Inspector.

(4c) In any legal proceedings a copy of a code adopted under the regulations or a copy of any code, standard or requirement referred to in a code so adopted, certified or purporting to be certified by the Chief Inspector or an inspector authorized by the Chief Inspector for that purpose to be a true copy of a code adopted under the regulations or a code, standard or requirement referred to in a code so adopted, as the case may be, shall be evidence of the adopted code or of the code, standard or requirement referred to in an adopted code. ”; and

- (c) in subsection (5) by deleting “The” and substituting the following—

“ In addition to the exemptions prescribed in the regulations, the ”.

Section 63 amended

18. Section 63 of the principal Act is amended by inserting after paragraph (e) the following paragraph—

- “ (ea) to any pipeline to which the *Electricity Act 1945*, the *Gas Standards Act 1972*, the *Liquid Petroleum Gas Act 1956*, the *Petroleum Pipelines Act 1969*, the *Petroleum (Submerged Lands) Act 1982* or the *State Energy Commission Act 1979* applies; ”.

Savings

19. Notwithstanding anything in the principal Act as amended by this Act an order in council made under section 14 (1) or section 42 (2) (b) of the principal Act before the day that sections 6 and 7 of this

Act come into operation and in force immediately before that day continues to have effect as if made under the respective section of the principal Act as amended by this Act and may be amended or cancelled by the Minister by order published in the *Government Gazette* as though it were an order made by the Minister under the respective provision of the principal Act as amended by this Act.
