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ELIZABETHAE II REGINAE

A.D. 1990

No. 16 of 1990

An Act to amend the Explosives Act, 1936.

[Assented to 19 April 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Explosives Act Amendment Act, 1990*.
- (2) The *Explosives Act, 1936*, is referred to in this Act as “the principal Act”.

Special rules for regulation of workmen in factory

2. Section 11 of the principal Act is amended by striking out from subsection (2) “four dollars” and substituting “a division 9 fine”.

Licensing of factories

3. Section 12 of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(3) A person who manufactures an explosive at an unauthorized place is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

(4) Where an explosive is manufactured at an unauthorized place, all or any part of the explosive or the ingredients of any explosive found in or about the place of manufacture or in the possession or under the control of a person convicted under this section may be forfeited to the Crown by a court of summary jurisdiction.

Precautions against fire and explosions

4. Section 13 of the principal Act is amended—

(a) by inserting at the foot of subsection (1) the following penalty provision:

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.;

and

(b) by striking out subsection (2).

Restrictions as to carriage of explosives

5. Section 16 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) A person who carries an explosive or causes an explosive to be carried in contravention of this section is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

Substitution of s. 18

6. Section 18 of the principal Act is repealed and the following section is substituted:

Liability of consignor or consignee

18. A consignor, consignee or other person who by wilful act, neglect or default, or by improper refusal to accept delivery of an explosive from a carrier, causes a carrier to commit an offence against this Part, is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

Licences for carriage of explosives

7. Section 19 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) A person, other than a carrier licensed by the chief inspector, who carries in a vehicle any explosive in excess of the prescribed quantity of any explosive is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

Licensing of private magazines

8. Section 21 of the principal Act is amended by striking out subsection (4) and substituting the following subsections:

(4) If a person in whose name a licence is issued under this section contravenes or fails to comply with this Act or a condition of the licence, the licensee is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

(5) If a licensee is guilty of an offence against subsection (4)—

(a) the whole or any part of the explosives in the magazine may be forfeited to the Crown by a court of summary jurisdiction;

and

(b) the licence may be revoked by the chief inspector.

Licensing of premises

9. Section 22 of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(3) If a person in whose name a licence is issued under this section contravenes or fails to comply with this Act or a condition of the licence, the licensee is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

(4) If a licensee is guilty of an offence against subsection (3)—

(a) the whole or any part of the explosives on the premises may be forfeited to the Crown by a court of summary jurisdiction;

and

(b) the licence may be revoked by the chief inspector.

Keeping of explosives

10. Section 23 of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(3) If explosives are kept contrary to this section, the occupier of the place in which the explosives are kept and the owner of the explosives are each guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

(4) If explosives are kept contrary to this section, they may be seized by an inspector or a member of the police force and may be forfeited to the Crown by a court of summary jurisdiction.

Testing of explosives in Government magazine

11. Section 27 of the principal Act is amended—

(a) by inserting at the foot of subsection (1) the following penalty provision:

Penalty: Division 9 fine.;

and

(b) by striking out subsection (3).

Explosives reserve at Broad Creek

12. Section 28e of the principal Act is amended by inserting at the foot of subsection (2) the following penalty provision:

Penalty: Division 8 fine or division 8 imprisonment.

Vessels arriving with explosives to hoist flag

13. Section 29 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) The master of a ship who fails to comply with this section is guilty of an offence.

Penalty: Division 6 fine.

Ships carrying explosives

14. Section 31 of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) The master of a ship which is brought into or is within a prohibited area contrary to this section, or who contravenes any condition of an authority granted under this section, is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment, or both.

Explosives on arrival to be reported

15. Section 33 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) The master of a ship who fails to comply with this section is guilty of an offence.

Penalty: Division 6 fine.

Explosives removed from ship

16. Section 34 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) A person who discharges, loads or conveys explosives contrary to this section is guilty of an offence.

Penalty: Division 6 fine.

Penalty on going alongside wharves

17. Section 35 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) The master of a ship or boat in respect of which any contravention of this section is committed is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment, or both.

Explosives to be landed at the place appointed for the purpose

18. Section 36 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) A person who lands or attempts to land, or ships or attempts to ship, explosives contrary to this section is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

Explosives not to be shipped within certain limits

19. Section 37 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) The master of a ship or boat in respect of which a contravention of this section is committed is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment, or both.

Control over ships and boats in ports

20. Section 38 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) The master of a ship or boat who fails to comply with a direction under this section is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment, or both.

Boats carrying explosives to be licensed and provided with tarpaulins

21. Section 39 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) A person who conveys explosives, or causes explosives to be conveyed, in a boat that does not comply with subsection (1) is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

Inspector may be assisted

22. Section 43 of the principal Act is amended—

(a) by striking out “shall be guilty of an offence against this Act and liable to a penalty not exceeding forty dollars” and substituting “is guilty of an offence”;

and

(b) by inserting at the foot of the section the following penalty provision:

Penalty: Division 6 fine.

Substitution of s. 44

23. Section 44 of the principal Act is repealed and the following section is substituted:

Obstructing inspectors

44. (1) A person who—

(a) obstructs or hinders an inspector;

(b) interferes with, or prevents the exercise of, a power conferred by this Act upon an inspector;

(c) disobeys a lawful order or direction of an inspector;

or

(d) refuses or fails to answer truthfully questions put by an inspector pursuant to this Act,

is guilty of an offence.

Penalty: Division 6 fine.

(2) A person is not required to answer a question put by an inspector if the answer to the question would tend to incriminate him or her of an offence.

(3) If a person is guilty of an offence under subsection (1) and that person, or the employer of that person, is licensed under this Act, that licence may be revoked by the chief inspector.

Power to prohibit manufacture, storage, and carriage of specially dangerous explosives

24. Section 48 of the principal Act is amended by striking out subsection (3) and substituting the following subsections:

(3) A person—

(a) who conveys an explosive or causes it to be conveyed;

(b) who sells an explosive;

(c) who keeps an explosive;

or

(d) to whom an explosive is delivered,

in contravention of a proclamation under subsection (1), is guilty of an offence.

Penalty: (a) in the case of a body corporate—division 3 fine;

(b) in any other case—division 6 fine or division 6 imprisonment, or both.

(3a) If an explosive is conveyed, sold or kept in contravention of a proclamation under subsection (1), all or any part of the explosive may be forfeited to the Crown by a court of summary jurisdiction.

Penalty on and removal of trespassers

25. Section 50 of the principal Act is amended by striking out subsections (1) and (2) and substituting the following subsections:

(1) A person who enters without permission or otherwise trespasses upon a magazine or factory (whether licensed or not) or immediately adjoining land which is occupied in connection with the magazine or by the occupier of the factory is guilty of an offence.

Penalty: Division 8 fine or division 8 imprisonment.

(1a) A person who commits an offence against subsection (1) may immediately be removed from the magazine, factory or land by a member of the police force or by the keeper or occupier of the magazine or factory or any agent or servant of, or other person authorized by, the keeper or occupier.

(2) Any person other than the keeper or occupier of, or person employed in or about, a magazine or factory (whether licensed or not) who does any act which tends to cause explosion or fire in or about the magazine or factory is guilty of an offence.

Penalty: Division 6 fine or division 6 imprisonment, or both.

Insertion of ss. 51a and 51b

26. The following sections are inserted immediately after section 51 of the principal Act:

Offences by bodies corporate

51a. Where a body corporate is guilty of an offence against this Act, every member of the governing body and the manager of the body corporate is guilty of an offence and liable to the penalty prescribed for that offence when committed by a natural person, unless the member or manager proves that he or she—

(a) did not know and could not reasonably be expected to have known of the commission of that offence;

or

(b) exercised all due diligence to prevent the commission of that offence.

Continuing offences

51b. (1) Where an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—

(a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence;

and

(b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to a penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction, of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence.

(2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done notwithstanding that any period within which, or time before which, the act is required to be done has expired or passed.

Regulations

27. Section 52 of the principal Act is amended by striking out paragraph XXIV and substituting the following paragraph:

XXIV. Prescribing fines not exceeding a division 6 fine for contravention of any regulation.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor