

**Legislative Council—No 258A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 28 November 2017

South Australia

**Statutes Amendment (Explosives) Bill 2017**

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935* and the *Summary Offences Act 1953*.

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**The Parliament of South Australia enacts as follows:**

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Statutes Amendment (Explosives) Act 2017*.

### 5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

### 3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

## 10 Part 2—Amendment of *Criminal Law Consolidation Act 1935*

### 4—Amendment of section 31—Possession of object with intent to kill or cause harm

- (1) Section 31(1)—delete "10 years" and substitute:
  - 20 years

(2) Section 31(2)—delete "5 years" and substitute:

10 years

## 5—Insertion of Part 3D

After section 83L insert:

### Part 3D—Explosives offences

#### 83M—Interpretation

(1) In this Part—

*explosive device* means (subject to subsection (2)(a)) any apparatus, machine, implement or materials used or apparently intended to be used or adapted for causing or aiding in causing any explosion in, or with, any explosive substance (and includes any part of any such apparatus, machine or implement);

*explosive substance* means (subject to subsection (2)(b))—

(a) any substance used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and

(b) a substance, or substance of a kind, prescribed by the regulations;

*public place* has the same meaning as in the *Summary Offences Act 1953*.

(2) The Attorney-General may, by notice in the Gazette—

(a) declare that—

(i) any specified apparatus, machine, implement or materials or kind of apparatus, machine, implement or materials; or

(ii) any apparatus, machine, implement or materials used, possessed, supplied or manufactured in specified circumstances,

is exempted from the definition of *explosive device* in subsection (1) (and may, by subsequent notice in the Gazette, vary or revoke any such declaration); or

(b) declare that—

(i) a specified substance or kind of substance; or

(ii) a substance used, possessed, supplied or manufactured in specified circumstances,

is exempted from the definition of *explosive substance* in subsection (1) (and may, by subsequent notice in the Gazette, vary or revoke any such declaration).

### 83N—Explosive devices

- (1) A person who uses an explosive device without lawful excuse is guilty of an offence.

Maximum penalty: Imprisonment for 20 years.

- (2) A person who has possession of an explosive device in a public place without lawful excuse is guilty of an offence.

Maximum penalty: Imprisonment for 10 years.

- (3) A person who has possession of, supplies or takes a step in the process of manufacture of an explosive device without lawful excuse is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

- (4) For the purposes of subsection (3)—

- (a) *a step in the process of manufacture* of an explosive device includes, without limitation, any of the following when done for the purpose of manufacture of the device:

(i) acquiring equipment, substances or materials;

(ii) storing equipment, substances or materials;

(iii) carrying, transporting, loading or unloading equipment, substances or materials;

(iv) guarding or concealing equipment, substances or materials;

(v) providing or arranging finance (including finance for the acquisition of equipment, substances or materials);

(vi) providing or allowing the use of premises or jointly occupying premises; and

- (b) *supply* includes offer to supply.

### 83O—Explosive substances, prescribed equipment or instructions

- (1) A person who, in suspicious circumstances and without lawful excuse, uses, has possession of or supplies—

(a) an explosive substance; or

(b) equipment of a kind prescribed by the regulations; or

(c) instructions on how to make an explosive device,

is guilty of an offence.

Maximum penalty: Imprisonment for 7 years.

- 5 (2) A person will be taken to use, have possession of or supply a thing in *suspicious circumstances* for the purposes of this section if the person uses, has possession of or supplies the thing in circumstances that give rise to a reasonable suspicion that the person is intending to cause harm to another person or to cause damage to property (or to assist another person to cause such harm or damage).

### 83P—Bomb hoaxes

- 10 (1) A person who—  
(a) places an article or substance in any place; or  
(b) sends an article or substance by any means of transportation, with the intention of inducing in another person a false belief that the article or substance is likely to explode or ignite or discharge a dangerous or deleterious matter is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- 15 (2) A person who, whether within or outside South Australia, makes a statement or conveys information to another person, knowing or believing the statement or information to be false, with the intention of inducing in that other person, or any other person, a belief that an article or substance that is liable to explode, ignite or discharge  
20 dangerous or harmful matter is present in a place in South Australia is guilty of an offence.

Maximum penalty: Imprisonment for 5 years.

- 25 (3) For a defendant to be guilty of an offence against subsection (1) or (2) it is not necessary for the defendant to have any particular person in mind as the person in whom the defendant intends to induce the belief referred to in that subsection.

### 5A—Review

- 30 (1) The Attorney-General must undertake a review of the operation and effectiveness of the amendments effected by this Part.  
(2) The review required under this section must commence not later than 3 years after the commencement of this Part.  
(3) The Attorney-General must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

## Part 3—Amendment of *Summary Offences Act 1953*

### 6—Insertion of sections 72D to 72F

After section 72C insert:

#### **72D—Explosives offences—special powers**

- 5 (1) A police officer may—
- (a) at any time, enter and search any premises for the purpose of  
ascertaining whether a suspected offence against Part 3D of  
the *Criminal Law Consolidation Act 1935* (an *explosives*  
*offence*) is being or has been committed; and
- 10 (b) if reasonably necessary for that purpose, break into or open  
any part of the premises, or anything in or on the premises;  
and
- (c) for the purposes of paragraph (a) or (b), require the driver of  
any vehicle, the master of any vessel or the pilot of any  
15 aircraft to stop that vehicle, vessel or aircraft; and
- (d) seize any property that may be intended to be used for the  
purpose of committing, or that may afford evidence as to the  
commission of, an offence (whether or not an explosives  
offence) to be dealt with according to law.
- 20 (2) The Commissioner may direct that property seized by a police officer  
exercising search powers under this section in relation to a suspected  
explosives offence (*seized property*) be destroyed, whether or not a  
person has been or is to be charged with an offence in relation to it.
- 25 (3) Property referred to in subsection (2) may be destroyed at the place  
at which it was seized or at any other suitable place.
- (4) If a person is convicted of an offence in relation to property  
destroyed in accordance with subsection (2), the court may order the  
convicted person to pay the reasonable costs of destruction to the  
Commissioner.
- 30 (5) If the Magistrates Court, on application by a police officer, or any  
court hearing proceedings for an offence relating to seized property,  
finds that seized property was the subject of an explosives offence,  
the court may, by order, forfeit the property to the Crown.
- 35 (6) Property that is the subject of an order for forfeiture under this  
section may be sold, destroyed or otherwise disposed of as the  
Commissioner directs.

- 5 (7) Subject to subsections (8) and (9), if seized property has not been forfeited to the Crown in proceedings commenced within the prescribed period after its seizure, a person from whose lawful possession the property was seized, or a person with legal title to it, is entitled to recover from the Commissioner (if necessary, by action in a court of competent jurisdiction) the property itself, or if it has been damaged or destroyed or has deteriorated, compensation of an amount equal to its market value at the time of its seizure.
- 10 (8) Subsection (7) does not apply to property that has been destroyed under subsection (2).
- (9) Despite subsection (7), a court hearing proceedings under that subsection in relation to property that has not been destroyed under subsection (2) may, if it thinks fit, make an order under subsection (5) for forfeiture of the property to the Crown.
- 15 (10) Nothing in this section affects the operation of the *Criminal Assets Confiscation Act 2005*.
- (11) In this section—
- premises* means any land, building, structure, vehicle, vessel or aircraft;
- 20 *prescribed period* means 2 years or such longer period as the Magistrates Court may, on application by a police officer, allow.

### **72E—Explosives offences—analysis and evidence**

- 25 (1) The Commissioner may appoint analysts for the purposes of analysing seized property.
- (2) The Commissioner must develop, and publish on a website determined by the Commissioner, guidelines in relation to—
- (a) the manner in which seized property may be analysed; and
- (b) the keeping of records in relation to the analysis of seized property.
- 30 (3) Guidelines published under subsection (2) may (without limitation) provide for an analysis of seized property to be undertaken by means of testing, physical examination, visual inspection of the property, or of photographs or films of the property, or in any other manner the Commissioner thinks fit, having regard to the need to protect the safety of any persons or property.
- 35 (4) In any proceedings for an explosives offence, an apparently genuine document purporting to be signed by an analyst and to certify that an analysis of seized property referred to in the certificate was carried out by, or under the supervision of, the analyst in accordance with guidelines published under subsection (2) will, in the absence of proof to the contrary, be proof of any facts stated in the certificate—
- 40 (a) tending to identify the property analysed or the nature of the property analysed; and

(b) as to the weight, amount or quantity of the property analysed; and

(c) relating to the nature and results of the analysis.

5 (5) In any proceedings for an explosives offence, an apparently genuine document purporting to be signed by an analyst and to certify that a specified substance is an explosive substance within the meaning of Part 3D of the *Criminal Law Consolidation Act 1935* will, in the absence of proof to the contrary, be proof of the matter certified.

10 (6) If the label on a container or vehicle states or indicates that it contains a dangerous substance then, in proceedings for an explosives offence, it is to be taken, in the absence of proof to the contrary—

(a) that the container or vehicle contains a dangerous substance of the description and in the quantity stated on the label; and

15 (b) that all other information on the label, or any other label on the container or vehicle, about the dangerous substance is true.

20 (7) In any proceedings for an explosives offence, an apparently genuine document purporting to be signed by the Commissioner and to certify that a person named in the certificate is an analyst will, in the absence of proof to the contrary, be proof of the matter certified.

(8) In this section—

*dangerous substance* has the same meaning as in the *Dangerous Substances Act 1979*;

25 *explosives offence* has the same meaning as in section 72D;

*label*, in relation to a container or vehicle, means any label, marking, placard or other information on the container or vehicle;

*seized property* means seized property within the meaning of section 72D.

### 30 **72F—Annual report on explosives powers**

The following information must be included in the annual report of the Commissioner under section 75 of the *Police Act 1998* (other than in the year in which this section comes into operation):

35 (a) the number of occasions on which the search powers under section 72D were exercised during the period to which the report relates; and

(b) the number of occasions on which property was seized as a result of the exercise of those search powers and the nature of the property seized; and

40 (c) whether any persons were charged with explosives offences (within the meaning of section 72D) in connection with the exercise of those search powers; and



(d) any other information requested by the Minister.

**6A—Review**

- (1) The Attorney-General must undertake a review of the operation and effectiveness of the amendments effected by this Part.
- 5 (2) The review required under this section must commence not later than 3 years after the commencement of this Part.
- (3) The Attorney-General must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.