



HOUSE OF ASSEMBLY

TUESDAY 17TH OCTOBER 2017

STATUTES AMENDMENT (EXPLOSIVES) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 27 September 2017.)

Mr PEDERICK (Hammond) (17:18): I rise to speak to the Statutes Amendment (Explosives) Bill 2017. This bill, which was introduced in September, seeks to amend a couple of acts: the Criminal Law Consolidation Act 1935 and the Summary Offences Act 1953. What it is aiming to do as a bill is to make sure that the penalties for the possession, manufacture and use of explosive devices and related substances, apparatus and instructions are commensurate with the seriousness of the risk posed by the reckless and malicious use of improvised explosive devices.

Most of the offences relating to the manufacture and possession of explosives are set out in the Explosives Act, the Explosives Regulations 2011, the Explosives (Security Sensitive Substances) Regulations 2006 and the Explosives (Fireworks) Regulations 2016. These offences in regard to the Explosives Act, and the regulations commensurate thereof, are primarily targeted towards commercial or maritime misuse or manufacture of explosives covering, for example, rules governing licensing for the manufacture, keeping, sale and transport of explosives.

The government have indicated that they believe the penalties under the legislation are not significant and, if proceedings under the act are to be disposed of summarily, this means that the South Australian police force cannot utilise investigatory options under acts like the Telecommunications (Interception) Act 2012, the Listening and Surveillance Devices Act and the Criminal Investigation (Covert Operations) Act 2009.

Certainly, in regard to those acts and the changing face of the world we live in, we have terrorism and we have people who, for whatever reason and without any thought of the greater community, want to have bomb hoaxes and want to wreak havoc. Sadly, we will see more and more legislation like this being beefed up not just in this state but in other states and across the country.

In the Criminal Law Consolidation Act there will be significantly higher penalties with the new criminal offences that are created. For instance, an explosive

device is defined as any apparatus, machine, implement or material used or apparently intended to be used or adapted for causing or aiding and causing any explosion in or with any explosive substance, and includes any part of any such apparatus, machine or implement.

An explosive substance is defined as any substance used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect, and any substance or substance of a kind prescribed by the regulations. It is noted that the Attorney-General, by notice in the *Gazette*, can exempt a specific apparatus, substance, machine, implement or material from the definitions and therefore from the operation of part 3D of the act.

It is noted that the offences are beefed right up. There are three new offences relating to explosive devices. The most serious offence is the unlawful use of an explosive device and that carries a maximum penalty of 20 years' imprisonment. The offence of possessing an explosive device in a public place without lawful excuse and to possess, supply or take steps in the process of manufacture of an explosive device without lawful excuse carries a maximum term of imprisonment of 10 years and seven years respectively. In regard to the lawful excuse, the burden of proof obviously lies with the defendant in accordance with existing section 5B of the Criminal Law Consolidation Act.

In regard to that, I note that over the last 25 to 30 years things have tightened up in regard to buying a substance, used by farmers and miners, called Nitropril. Nitropril is ammonium nitrate. It is a fertiliser, a prilled substance, and when mixed with a certain ratio of diesel it creates an explosive device. It is very effective. I have assisted one of my brothers and one of my friends, who did have tickets to operate with Nitropril, to use it effectively on the farm for blowing out dead trees and also stumps, especially where we wanted to put in new tree lines.

It is something you need to manage when you use it, obviously. It is very dangerous if you do the wrong thing. With Nitropril, before it is mixed with the diesel, the ammonium nitrate is quite stable and reasonably safe to handle. There are safety data sheets available on how you use it. It is in widespread use around the place. It is very effective when you have the odd bit—and only the odd bit—of sheet rock that you cannot dislodge out of a paddock and you can blow that up quite effectively with Nitropril. Obviously you have to have the appropriate people who have the ticket to use the explosive material.

As I said, farmers find it very useful. I would not like to see farmers having to prove their innocence if they have the right licences in place and being put under excess burden because of this impending act, but I do understand why this bill has been brought before us. The world has changed. It is changing all the time but I believe that, since the early nineties when we used to use a lot of this on the farm for tree lines and getting rid of some sheet rock in paddocks, the supply has been heavily regulated.

My understanding is that you cannot just drive in and pick up a tonne of ammonium nitrate. You obviously have to have the right licensing and arrangements under the regulations. I would have to check the facts, but from what I have been told, it has been used in regard to Motorsport Park, which is

built on a great big rock, essentially, at Taillem Bend. One or two large explosions were used to create their own rubble and also to create access for putting in underground services.

It is a useful explosive and, as I indicated, it is also used in the mining industry on a pretty broad basis. Obviously powder monkeys and others who use Nitropril know how it works: it always finds the easiest way out. When we were blowing out stumps, we found that we had to pack in a few rocks around the charge because otherwise it would take the easy way out and just blow sand everywhere and do half the job. It is very effective but you do have to respect it, just as you have to respect firearms, because an accident can have very dire consequences.

The bill also creates a new offence, with a maximum penalty of seven years' imprisonment, where a person possesses, uses or supplies an explosive substance, prescribed equipment or instructions on how to make an explosive device in suspicious circumstances without a lawful excuse. Obviously, you need to prove that. I note that the equipment used for mixing ammonium nitrate and diesel is basically just a jug and a big bucket. You mix it up and let her brew. It is pretty simply made, but obviously it has to be done by someone who has a ticket to do it.

The part of the bill that I have some concerns about is in regard to the special powers that will be provided to police officers to enter premises at any time, to search those premises for the purpose of checking whether an offence has occurred under the new provisions. I note that no court order is required for these search and entry procedures. Under the current Explosives Act, police officers may only inspect and enter premises that are licensed by the chief executive officer of the department. These sections restrict any police officer from breaking into any part of the premises and seizing any sample, product or equipment that may be intended to be used for committing any offence.

Obviously, this aspect of the bill is more controversial than the earlier parts of the legislation. The police have the right to enter property, which includes houses and vehicles, in limited circumstances without a warrant. Our current law—and I stress that—would allow the police to do so if they formed the view that an offence was being or had been committed. This bill allows police to enter, seize and destroy devices and to break, enter and search vehicles or vessels. I note that this aspect of the bill was requested by South Australian police way back in early 2007, over 10 years ago. Their primary concern was the risk to police officers. It is noted that in other states legislation does not include the provision of extensive police powers, and obviously this will be debated through this house and the other place as this bill is progressed.

New section 72D in the bill sets out what is to be done in regard to the seizure and destruction of any property that may afford evidence as to the commission of an explosives offence; to do that the safety of officers needs to be taken into account. To investigate the possible explosives offence, the commissioner has broad powers to direct that any seized property should be destroyed. That can be done in situ if required or at some other suitable place, and obviously there are good reasons for that. The material could be volatile.

If they wanted to get rid of the issue—some premixed Nitropril, for instance—I am assuming they would take the appropriate photos and recordings and take the Nitropril away to some place and detonate it. Obviously that would be a reason that you could not transport it. It could either be done on site in a safe location with the appropriate safeguards or taken to a close appropriate facility so that it did not have to be transported too far. If the property is destroyed, the court may order the convicted person to pay to the commissioner the reasonable costs of destruction.

We have talked about the in situ provision, and there is also new section 72E, which refers to the commissioner's appointment of analysts for the purpose of analysing seized property and the use of evidentiary certificates. It refers to the manner in which seized property to be analysed must be set out in guidelines by the police commissioner and placed on a website. Obviously, once the material is analysed, an evidentiary certificate may be used. It will be used in the absence of any proof to the contrary as proof of the fact stated in the certificate. In addition, a subsection in the bill provides a presumption as to the contents of containers or vehicles if the label states or indicates that it contains a dangerous substance.

In the main, this is legislation that is necessary for our time. As I said, we do have some concerns about the police entry rules. Certainly, miners and farmers need access to this material—it is not just Nitropril; I am just using that as an example today. I also note that I am aware that over time, the regulations and legislation have tightened up. As I said, you cannot just turn up to a fertiliser store and buy a tonne of Nitropril and go on your merry way, which is fair enough.

With those few words, we will investigate the possibility of some amendments along the way, whether it is in this place or the other place. We need to make sure that our people are safe, but we also need to make sure that the industries which require explosives have access to these materials, especially in case of farmers, where it might only be once every one or two decades. They are useful and absolutely vital if you need them at that time.