

DEFENCE (SPECIAL UNDERTAKINGS).

No. 19 of 1952.

An Act to provide for the Protection of Special Defence Undertakings.

[Assented to 10th June, 1952.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

- Short title.** **1.** This Act may be cited as the *Defence (Special Undertakings) Act 1952*.
- Commencement.** **2.** This Act shall come into operation on the day on which it receives the Royal Assent.
- Application.** **3.** This Act applies both within and without the Commonwealth and to all the Territories of the Commonwealth.
- Definitions.** **4.** In this Act, unless the contrary intention appears—
“Australia” includes all the Territories of the Commonwealth ;
“Commonwealth officer” means a person holding office under, or employed by, the Commonwealth and includes—
 (a) a person permanently or temporarily employed or serving in the Public Service of the Commonwealth or of a Territory of the Commonwealth, or in, or in connexion with, the Defence Force, or in the service of an authority or body constituted by or under an Act ; and

(b) a Peace Officer appointed in pursuance of the *Peace Officers Act 1925* ;

“ constable ” includes a member of the Police Force of the Commonwealth or of a State or Territory of the Commonwealth.

5.—(1.) The area of land and waters bounded by the circumference of a circle which has a radius of forty-five miles and its centre on Flag Island (one of the islands of the Monte Bello group of islands in the State of Western Australia) at latitude twenty degrees twenty-seven and one-half minutes South, and longitude one hundred and fifteen degrees thirty-five minutes East, being an area in which, after the commencement of this Act, an atomic weapon test will be conducted, is declared to be a prohibited area for the purposes of this Act.

Provisions relating to atomic weapon test at Monte Bello Islands.

(2.) When the Governor-General is satisfied that the operation of this Act in relation to the area specified in the last preceding subsection is no longer necessary, he shall make a Proclamation accordingly and thereupon that area shall cease to be a prohibited area for the purposes of this Act.

(3.) The atomic weapon test referred to in sub-section (1.) of this section is declared to be a special defence undertaking for the purposes of this Act.

6. A work or undertaking which—

(a) is being carried out, or is to be carried out, whether within or without Australia, for or in relation to the defence of Australia, or in part for or in relation to the defence of Australia and in part for or in relation to the defence of some other part of the Queen's dominions or of some other country associated with Australia in resisting or preparing to resist international aggression ; and

(b) is declared by the Minister, by notice in the *Gazette*, to be a special defence undertaking,

is a special defence undertaking for the purposes of this Act.

Special defence undertakings.

7.—(1.) A place (whether or not it belongs to or is used for the purposes of the Queen, the Commonwealth or a State) used or occupied for the purposes of a special defence undertaking is a prohibited area for the purposes of this Act.

Prohibited areas.

(2.) The last preceding sub-section does not apply to—

(a) a railway, tramway, roadway, wharf, pier or jetty, or a work or structure which is part of or connected with a means of transport by land, water or air ;

(b) the area on which is erected or situated a searchlight, lighthouse, buoy or other navigational aid ;

(c) a public building, fire station, aerodrome, air station or runway for aircraft ;

(d) a signal, telegraph, telephone, radar or wireless station or office ; or

(e) a place used for gas, water or electricity works or other works for purposes of a public character, unless it is used or occupied exclusively for the purposes of a special defence undertaking.

Minister may declare prohibited areas.

8. If it is necessary for the purposes of the defence of the Commonwealth so to do, the Minister may, by notice published in the *Gazette*, declare an area of land or water or an area of land and water (whether or not it belongs to or is used for the purposes of the Queen, the Commonwealth or a State) to be, for the purposes of this Act, a prohibited area.

Unlawful entry, &c.

9.—(1.) A person shall not be in, enter or fly over a prohibited area unless he is the holder of a permit under section eleven of this Act in respect of that prohibited area.

(2.) A person shall not, without lawful authority or excuse—

(a) make a photograph, sketch, plan, model, article, note or other document of, or relating to, a prohibited area or anything in a prohibited area; or

(b) obtain, collect, record, use, have in his possession, publish or communicate to some other person a photograph, sketch, plan, model, article, note or other document or information relating to, or used in, a prohibited area, or relating to anything in a prohibited area.

Penalty: Imprisonment for seven years.

Officer in charge.

10. The Minister may, by writing under his hand, appoint a person to be the officer in charge of a prohibited area.

Permits.

11.—(1.) The Minister, the officer in charge of a prohibited area, or some other person appointed by the Minister for the purpose, may, by writing under his hand, issue a permit authorizing a person to be in, enter or fly over a prohibited area.

(2.) A permit under this section may be issued subject to such conditions and restrictions as are specified in the permit.

(3.) A person authorized to issue a permit under this section may suspend a permit issued under this section and may revoke the suspension.

(4.) The holder of a permit issued under this section shall comply with the conditions and restrictions specified in the permit.

Penalty: Imprisonment for seven years.

(5.) If a permit issued under this section is revoked or suspended, the holder of the permit shall forthwith deliver it to the officer in charge of the prohibited area or to a person specified by the person revoking or suspending the permit.

Penalty: Imprisonment for two years.

Compliance with directions of officer in charge.

12. A person who, being the holder of a permit under the last preceding section, enters or is in a prohibited area shall comply with any direction for regulating his conduct while he is in the prohibited area which is given to him by the officer in charge of the prohibited area.

Penalty: Imprisonment for two years.

13. A person shall not wilfully damage, destroy, obstruct or interfere with— Sabotage.

- (a) a railway, tramway, roadway, wharf, pier or jetty, or a work or structure which is part of or connected with a means of transport by land, water or air ;
- (b) a searchlight, lighthouse, buoy or other navigational aid ;
- (c) a public building, fire station, aerodrome, air station or runway for aircraft ;
- (d) a signal, telegraph, telephone, radar or wireless station or office ; or
- (e) a place used for gas, water or electricity works or other works for purposes of a public character,

which is used or occupied either wholly or in part for the purposes of a special defence undertaking.

Penalty : Imprisonment for seven years.

14.—(1.) If it is necessary so to do for the protection of a special defence undertaking, the Minister may, by notice published in the *Gazette*, declare an area of land or water or an area of land and water to be a restricted area for the purposes of this Act. Restricted areas.

(2.) Where an area is declared to be a restricted area for the purposes of this Act, the Minister may, by order published in the *Gazette*—

- (a) prohibit the flight over that area of persons or aircraft, or of the persons or aircraft included in a class of persons or aircraft specified in the order ;
- (b) impose conditions and restrictions subject to which flight over that area by persons or aircraft, or by the persons or aircraft included in a class of persons or aircraft specified in the order, is permitted ; and
- (c) prohibit, or impose conditions in respect of, the possession, carriage and use of cameras and other photographic apparatus and material by persons within, or about to fly over, a restricted area.

(3.) A person shall not contravene or fail to comply with an order made under this section.

Penalty : Imprisonment for two years.

15.—(1.) Orders made under the last preceding section shall not be deemed to be Statutory Rules within the meaning of the *Rules Publication Act 1903-1939*. Orders.

(2.) The provisions of section forty-eight (except paragraphs (a) and (b) of sub-section (1.) and sub-section (2.)) and of section forty-nine of the *Acts Interpretation Act 1901-1950* apply, by force of this section, to orders made under the last preceding section in like manner as those provisions apply to regulations.

(3.) The *Acts Interpretation Act* 1901-1950 applies, by force of this section, to the interpretation of orders made under the last preceding section in like manner as it applies to the interpretation of regulations, and, for the purposes of section forty-six of that Act, orders so made shall be deemed to be regulations.

(4.) An order made under the last preceding section takes effect on the date on which the order is published in the *Gazette* or on such later date as is specified in the order.

Procedure in
emergency.

16. If the pilot of an aircraft (not being a person having lawful authority to be over the prohibited area or restricted area) finds that he is over a prohibited area or restricted area, he shall—

- (a) immediately cause the aircraft to be flown outside the area ;
- (b) as soon as possible, report the circumstances to the nearest air traffic control centre established under the Air Navigation Regulations ; and
- (c) cause the aircraft to land at such place as is designated by the air traffic control centre and, for that purpose, obey any instructions given by the air traffic control centre as to the movement of that aircraft.

Penalty : Imprisonment for two years.

Use of cameras,
&c.

17. A person shall not, except with the authority of the officer in charge of a prohibited area, have in his possession, carry or use a camera or other photographic apparatus or material while he is in or passing over the prohibited area.

Penalty : Imprisonment for two years.

Sea and air
traffic.

18. Where a permit under section eleven of this Act has been issued to the master of a ship or the pilot of an aircraft for the purpose of enabling the ship or aircraft to enter, pass through or be over a prohibited area, a person lawfully on board the ship or aircraft does not commit an offence against section nine of this Act by reason only of his presence on board the ship or aircraft.

Suspension, &c.,
of licences and
certificates.

19. Where a person is convicted of an offence against this Act, the Director-General of Civil Aviation may suspend or cancel any licence or certificate issued to that person under or by virtue of the Air Navigation Regulations and, upon a licence or certificate being so suspended or cancelled, the same consequences follow as if the suspension or cancellation had been made under or by virtue of those Regulations.

Search of
persons in or
entering
prohibited
areas.

20.—(1.) A Commonwealth officer acting in the course of his duty or employment, or a constable, may, without warrant, detain for the purpose of search, and search, a person in the neighbourhood of, entering, seeking to enter, being within, leaving or seeking to leave a prohibited area, and any bag or other article in the possession of the person.

(2.) A person conducting a search in pursuance of the last preceding sub-section may seize anything which appears to that person to have been made, obtained, collected, recorded, possessed or used in contravention of this Act or which that person has reasonable ground for believing to be evidence of an offence against this Act.

(3.) A female shall not be searched under this section except by a female.

21. If it appears to a Commonwealth officer acting in the course of his duty or employment, or to a constable, that an aircraft is intended or is likely to be flown in contravention of this Act or of an order under section fourteen of this Act, the officer or constable may enter, search and detain the aircraft and may remove or direct the removal of the aircraft, or any part of it, for the purposes of ensuring its detention or preservation.

Search and detention of aircraft.

22. A person who is found committing an offence against this Act, or is reasonably suspected of having committed, or of having attempted to commit or of being about to commit, such an offence, may be arrested without warrant by a constable or person in the same manner as a person who is found committing a felony may, at common law, be arrested by a constable or person.

Power to arrest.

23.—(1.) A person who is in, or in the neighbourhood of, a prohibited area and is reasonably suspected of having committed, having attempted to commit or of being about to commit an offence against this Act may be apprehended, without warrant, by or under the direction of the officer in charge of the prohibited area, a Commonwealth officer, a constable or a person authorized by the Minister to act under this section and may be removed from, or from the neighbourhood of, the prohibited area and given into the custody of a constable to be dealt with according to law.

Arrest of suspected persons.

(2.) A person who is in, or in the neighbourhood of, a prohibited area shall, on demand by the officer in charge of the prohibited area, a Commonwealth officer or a constable, give his name and address to the officer or constable.

Penalty : Imprisonment for two years.

24. A person shall not obstruct, knowingly mislead or otherwise interfere with or impede a Commonwealth officer, constable or other person in the execution, or attempted execution, of a power or duty conferred or imposed on him by this Act.

Interfering with constables or Commonwealth officers.

Penalty : Imprisonment for two years.

25. A photograph, sketch, plan, model, article, note or other document which is made, obtained, collected, recorded, possessed or otherwise dealt with in contravention of this Act is forfeited to the Commonwealth.

Forfeiture of articles, &c.

No action
against
Commonwealth.

26. No action lies against the Commonwealth, a State, a Commonwealth officer, a constable or any other person acting in accordance with this Act in respect of an arrest, apprehension, detention, search, seizure or act in pursuance of this Act, but, if the Governor-General is satisfied that an arrest, apprehension, detention, search, seizure or act was made or done without reasonable cause, he may award reasonable compensation in respect of it.

Application of
Approved
Defence
Projects
Protection Act.

27. The *Approved Defence Projects Protection Act* 1947 applies to and in relation to a special defence undertaking as if that undertaking were an approved defence project within the meaning of that Act.

Prosecution of
offences.

28.—(1.) A prosecution under this Act or the regulations shall be instituted only by or with the consent of the Attorney-General or of a person acting under his direction.

(2.) A person charged with an offence against this Act or the regulations may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General or of a person acting under his direction has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

(3.) Nothing in this section prevents the discharge of a person charged if proceedings are not continued within a reasonable time.

Punishment of
offences.

29.—(1.) An offence against this Act may be prosecuted either summarily or upon indictment but an offender is not liable to be punished more than once in respect of the same offence.

(2.) The punishment for an offence against this Act is—

(a) if the offence is prosecuted summarily—a fine not exceeding One hundred pounds or imprisonment for a term not exceeding six months, or both; or

(b) if the offence is prosecuted upon indictment—a penalty not exceeding the penalty provided by this Act in respect of the offence.

Jurisdiction of
courts.

30.—(1.) Subject to the succeeding provisions of this section—

(a) the several courts of the States are invested with federal jurisdiction; and

(b) jurisdiction is conferred on the several courts of the Territories of the Commonwealth,

with respect to offences against this Act or the regulations.

(2.) The jurisdiction invested in or conferred on courts by the last preceding sub-section is invested or conferred within the limits (other than limits having effect by reference to the places at which offences are committed) of their several jurisdictions, whether those limits are as to subject-matter or otherwise.

(3.) The trial on indictment of an offence against this Act, not being an offence committed within a State, may be held in any State or Territory of the Commonwealth.

(4.) The jurisdiction invested in, or conferred on, a court of summary jurisdiction by this section shall not be judicially exercised except by a Judge, a Chief, Police, Stipendiary, Resident or Special Magistrate, or a District Officer or Assistant District Officer of a Territory of the Commonwealth.

(5.) Where an appeal lies from a court to the Supreme Court of a State or Territory of the Commonwealth, an appeal from a decision of the first-mentioned court exercising jurisdiction by virtue of this section may be brought to the High Court.

(6.) The High Court may grant special leave to appeal to the High Court from a decision of a court of a State or Territory of the Commonwealth exercising jurisdiction by virtue of this section notwithstanding that the law of that State or Territory prohibits an appeal from the last-mentioned court.

(7.) Subject to this Act, the laws of a State or Territory of the Commonwealth with respect to the arrest and custody of offenders or persons charged with offences and the procedure for—

- (a) their summary conviction ;
- (b) their examination and commitment for trial on indictment ;
- (c) their trial and conviction on indictment ; and
- (d) the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith,

and for holding accused persons to bail apply, so far as they are applicable, to a person who is charged in that State or Territory with an offence against this Act or the regulations.

(8.) Except as provided by this section, the *Judiciary Act* 1903-1950 applies in relation to offences against this Act or the regulations.

(9.) For the purposes of this section, "court of summary jurisdiction" includes a court of a Territory of the Commonwealth sitting as a court for the making of summary orders or the summary punishment of offences under the law of the Territory.

31.—(1.) At any time before or during the hearing of proceedings in respect of an offence against this Act or the regulations, the judge, magistrate or other person presiding or competent to preside over the proceedings may, if satisfied that such a course is expedient in the interests of the defence of the Commonwealth—

- (a) order that some or all of the members of the public shall be excluded during the whole or a part of the proceedings ;
- (b) order that no report of the whole or a specified part of the proceedings shall be published ; or
- (c) make such other order and give such directions as he thinks necessary for ensuring that an affidavit, exhibit, information or other document used in the proceedings does not remain on the file in the court or in the records of the court after the hearing of the proceedings has been completed.

(2.) A person shall not contravene or fail to comply with an order made or direction given in pursuance of this section.

Penalty : Imprisonment for five years.

Hearing in
camera, &c.

Regulations.

32. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing penalties for offences against the regulations, but so that no prescribed period of imprisonment shall exceed six months and no prescribed pecuniary penalty shall exceed Two hundred pounds.
