

1914-15.

THE PARLIAMENT OF THE COMMONWEALTH

HOUSE OF REPRESENTATIVES.

Read 1° 22nd April, 1915.

(Brought from the Senate.)

A BILL

FOR

AN ACT

To amend the *War Precautions Act 1914*.

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

1.—(1.) This Act may be cited as the *War Precautions Act* Short title and citation.
5 1915.

(2.) The *War Precautions Act 1914* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *War Precautions Act 1914-1915*.

10 2. Section four of the Principal Act is repealed and the following section inserted in its stead:—

“ 4.—(1.) The Governor-General may make regulations for Regulations. securing the public safety and the defence of the Commonwealth, and in particular with a view—

15 “ (a) to prevent persons communicating with the enemy or obtaining information for that purpose or for any purpose calculated to jeopardize the success of the operations of any of His Majesty's forces in Australia or elsewhere, or the forces of His Majesty's allies, or
20 to assist the enemy ; or

(b) to

- (b) to prevent the transmission abroad, except through the post, of any letter, post-card, letter-card, written communication or newspaper ; or
- (c) to secure the safety of His Majesty's forces and ships and the safety of any means of communication or of any railways, ports, harbors, or public works ; or 5
- (d) to prevent the spread of false reports or reports likely to cause disaffection to His Majesty or public alarm, or to interfere with the success of His Majesty's forces by land or sea, or to prejudice His Majesty's relations with foreign powers ; or 10
- (e) to secure the navigation of vessels in accordance with directions given by or under the authority of the Naval Board ; or
- (f) otherwise to prevent assistance being given to the enemy or the successful prosecution of the war being endangered, 15

and for conferring such powers and imposing such duties as he thinks fit, with reference thereto, upon the Naval Board and the Military Board, and the members of the naval and military forces of the Commonwealth, and other persons. 20

"(2.) Any such regulations or any orders made thereunder affecting the pilotage of vessels may supersede any enactment (whether of the Commonwealth or a State), order, by-law, regulation, or provision as to pilotage. 25

"(3.) The Minister may—

- (a) require that there shall be placed at his disposal the whole or any part of the output of any factory or workshop in which arms, ammunition, or warlike stores or equipment, or any articles required for the production thereof are manufactured ; and 30
- (b) take possession of and use for the purpose of His Majesty's naval or military service any such factory or workshop or any plant thereof ;

and the power to make regulations under this Act shall extend to the making of regulations in relation to the matters specified in this sub-section. 35

Amendment of
s. 5.

3. Section five of the Principal Act is amended—

- (a) by inserting in paragraph (i), after the words "the Minister," the words "and on the Naval Board and the Military Board" ; 40
- (b) by inserting in paragraph (j) after the words "with respect to" the words "the administration of oaths," ; and
- (c) by adding at the end of that section the following sub-section :— 45

"(2.) Any provision of any order made under this section with respect to aliens may relate either to aliens in general or to any class or description of aliens." 50

4. Section

4. Section six of the Principal Act is repealed, and the following section inserted in its stead :—

“6. (1.) Any person who contravenes, or fails to comply with, any provision of any regulation or order made in pursuance of this Act shall be guilty of an offence against this Act. Trial of offences.

“(2.) An offence against this Act may be prosecuted either summarily or upon indictment, or if the regulations so provide by court-martial, but an offender shall not be liable to be punished more than once in respect of the same offence.

10 “(3.) The punishment for an offence against this Act shall be as follows :—

(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 ;

15 (b) If the offence is prosecuted upon indictment—a fine of any amount or imprisonment for any term, or both :

Provided that where it is proved that the offence is committed with the intention of assisting the enemy the person convicted of such an offence shall be liable to suffer death.

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(c) If the offence is prosecuted by court-martial—the same punishment as if the offender had been a person subject to military law and had on active service committed an offence under section five of the Army Act :

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Provided that where it is proved that the offence is committed with the intention of assisting the enemy the person convicted of such an offence by a court-martial shall be liable to suffer death.

30 “(4.) For the purpose of the trial of a person summarily or upon indictment for an offence against this Act the offence shall be deemed to have been committed either at the place in which it actually was committed or (subject to the Constitution) at any place in which the person may be.

35 “(5.) For the purpose of the trial by court-martial of a person for an offence under the regulations the person may be proceeded against and dealt with as if he were a person subject to military law and had on active service committed an offence under section five of the Army Act.

40 “(6.) Where a person being a British subject but not being a person subject to the Naval Discipline Act or to military law is alleged to be guilty of any offence against this Act which is triable by court-martial, he shall be entitled, within six clear days from the time when the general nature of the charge is communicated to him, to claim that he be tried by a civil court instead of being tried by court-martial, and where such a claim is made, the offence shall not be tried by court-martial :

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Provided

Provided that before the trial of any person to whom this sub-section applies and as soon as practicable after arrest the general nature of the charge shall be communicated to him in writing and notice in writing shall at the same time be given in the prescribed form of his rights under this sub-section.

“(7.) The expression ‘British subject’ in sub-section (6.) of this section includes a woman who has married an alien but who before marriage was a British subject. 5-

“(8.) In the event of any special military emergency arising out of the present war the Governor-General may by proclamation forthwith suspend the operation of sub-section (6.) of this section, either generally or as respects any area specified in the proclamation, without prejudice, however, to any proceedings under this section which may be then pending in any civil court. 10-

“(9.) The regulations may authorize a civil court or court-martial, in addition to any other punishment, to order the forfeiture of any goods in respect of which an offence against this Act has been committed.” 15-

5. Section nine of the Principal Act is repealed and the following section inserted in its stead:— 20-

Onus of proof.

“9. If any question arises on any proceedings under any order made in pursuance of this Act, or with reference to anything done or proposed to be done under any such order, whether any person is an alien or not, or is an alien of a particular class or not, the onus of proving that that person is not an alien or, as the case may be, is not an alien of that class, shall lie upon that person.” 25-

1917
1863

1914-15.

THE PARLIAMENT OF THE COMMONWEALTH.

HOUSE OF REPRESENTATIVES.

THE WAR PRECAUTIONS ACT 1914

(No. 10 OF 1914)

AS PROPOSED TO BE AMENDED BY

THE WAR PRECAUTIONS BILL 1915.

(Circulated by the Assistant Minister, Mr. Jensen.)

The words printed in erased type are the words proposed to be omitted from the Act.

The words printed in black type are the words proposed to be inserted in the Act.

An Act to enable the Governor-General to make Regulations and Orders for the safety of the Commonwealth during the present state of war.

[Assented to 29th October, 1914.]

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

1. This Act may be cited as the *War Precautions Act 1914*, and shall be incorporated and read as one with the *Defence Act 1903-1912*. Short title and incorporation.

2.—(1.) This Act shall continue in operation during the continuance of the present state of war, and no longer. Duration of Act.

(2.) For the purposes of this Act, the present state of war means the period from the fourth day of August One thousand nine hundred and fourteen, at the hour of eleven o'clock post meridiem reckoned according to Greenwich standard time, until the issue of a proclamation by the Governor-General that the war between His Majesty the King and the German Emperor and between His Majesty the King and the Emperor of Austria King of Hungary has ceased.

3. All regulations and orders made by the Governor-General since the commencement of the present state of war shall be deemed to have been made in pursuance of the powers conferred by this Act, and any contravention thereof or non-compliance therewith, whether before or after the commencement of this Act, shall be deemed to be an offence against this Act and shall be punishable accordingly. Application of Act to regulations &c., made since commencement of state of war.

4.—(1.) The Governor-General may make regulations for securing the public safety and the defence of the Commonwealth, and for conferring such powers and Regulations.

imposing such duties as he thinks fit, with reference thereto, upon the Naval Board and the Military Board and the members of the Naval and Military Forces of the Commonwealth.

(*) The regulations may authorize the trial by Courts-Martial and punishment of persons contravening any of the provisions of such regulations designed—

- (a) to prevent persons communicating with the enemy, or obtaining information for that purpose or for any purpose calculated to jeopardize the success of the operations of any of His Majesty's forces, in Australia or elsewhere, or to assist the enemy; or
- (b) to secure the safety of any means of communication, or of any railways, docks, harbors, or public works; or
- (c) to prevent the spread of reports likely to cause disaffection or alarm.

in like manner as if such persons were members of the Military Forces of the Commonwealth and had on active service committed an offence under section five of the Army Act.

4.—(1.) The Governor-General may make regulations for securing the public safety and the defence of the Commonwealth, and in particular with a view —

- (a) to prevent persons communicating with the enemy or obtaining information for that purpose or for any purpose calculated to jeopardize the success of the operations of any of His Majesty's forces in Australia or elsewhere, or the forces of His Majesty's allies, or to assist the enemy; or
- (b) to prevent the transmission abroad, except through the post, of any letter, post-card, letter-card, written communication or newspaper; or
- (c) to secure the safety of His Majesty's forces and ships and the safety of any means of communication or of any railways, ports, harbors, or public works; or
- (d) to prevent the spread of false reports or reports likely to cause disaffection to His Majesty or public alarm, or to interfere with the success of His Majesty's forces by land or sea, or to prejudice His Majesty's relations with foreign powers; or
- (e) to secure the navigation of vessels in accordance with directions given by or under the authority of the Naval Board; or
- (f) otherwise to prevent assistance being given to the enemy or the successful prosecution of the war being endangered,

and for conferring such powers and imposing such duties as he thinks fit, with reference thereto, upon the Naval Board and the Military Board, and the members of the naval and military forces of the Commonwealth, and other persons.

(2.) Any such regulations or any orders made thereunder affecting the pilotage of vessels may supersede any enactment (whether of the Commonwealth or a State), order, by-law, regulation, or provision as to pilotage.

(3.) The Minister may—

- (a) require that there shall be placed at his disposal the whole or any part of the output of any factory or workshop in which arms, ammunition, or warlike stores or equipment, or any articles required for the production thereof are manufactured; and
- (b) take possession of and use for the purpose of His Majesty's naval or military service any such factory or workshop or any plant thereof;

and the power to make regulations under this Act shall extend to the making of regulations in relation to the matters specified in this sub-section.

5.—(1.) The Governor-General may by order published in the *Gazette* make provision for any matters which appear necessary or expedient with a view to the public safety and the defence of the Commonwealth, and in particular—

Orders in Council.

- (a) for prohibiting aliens, either generally or as regards specified places, and either absolutely or except under specified conditions and restrictions, from landing or embarking in the Commonwealth ;
- (b) for deporting aliens from the Commonwealth ;
- (c) for requiring aliens to reside and remain within certain places or districts ;
- (d) for prohibiting aliens from residing or remaining in any areas specified in the order ;
- (e) for requiring aliens residing in the Commonwealth to comply with such provisions as to registration, change of abode, travelling, trading or otherwise as are specified in the order ;
- (f) for applying to naturalized persons, with or without modifications, all or any provisions of any order relating to aliens ;
- (g) for requiring any person to disclose any information in his possession as to any matter specified in the order ;
- (h) for preventing money or goods being sent out of Australia except under conditions approved by the Minister ;
- (i) for appointing officers to carry the order into effect, and for conferring on such officers and on the Minister and on the Naval Board and the Military Board such powers as are necessary or expedient for the purposes the order ; and
- (j) for conferring on such persons as are specified in the order such powers with respect to the administration of oaths, arrest, detention, search of premises and persons, inspecting impounding or retention of books documents and papers, and otherwise, as are specified in the order, and for any other matters necessary or expedient for giving effect to the order.

(2.) Any provision of any order made under this section with respect to aliens may relate either to aliens in general or to any class or description of aliens.

4. Any person who contravenes, or fails to comply with, any provision of any regulation or order made in pursuance of this Act shall be guilty of an offence against this Act.

Contravention of regulation or order.

Penalty: One hundred pounds or six months' imprisonment, or both.

6.—(1.) Any person who contravenes, or fails to comply with, any provision of any regulation or order made in pursuance of this Act shall be guilty of an offence against this Act.

(2.) An offence against this Act may be prosecuted either summarily or upon indictment, or if the regulations so provide by court-martial, but an offender shall not be liable to be punished more than once in respect of the same offence.

(3.) The punishment for an offence against this Act shall be as follows :—

- (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 ;
- (b) If the offence is prosecuted upon indictment—a fine of any amount or imprisonment for any term, or both :

Provided that where it is proved that the offence is committed with the intention of assisting the enemy the person convicted of such an offence shall be liable to suffer death.

- (c) If the offence is prosecuted by court-martial—the same punishment as if the offender had been a person subject to military law and had on active service committed an offence under section five of the Army Act :

Provided that where it is proved that the offence is committed with the intention of assisting the enemy the person convicted of such an offence by a court-martial shall be liable to suffer death.

(4.) For the purpose of the trial of a person summarily or upon indictment for an offence against this Act the offence shall be deemed to have been committed either at the place in which it actually was committed or (subject to the Constitution) at any place in which the person may be.

(5.) For the purpose of the trial by court-martial of a person for an offence under the regulations the person may be proceeded against and dealt with as if he were a person subject to military law and had on active service committed an offence under section five of the Army Act.

(6.) Where a person being a British subject but not being a person subject to the Naval Discipline Act or to military law is alleged to be guilty of any offence against this Act which is triable by court-martial, he shall be entitled, within six clear days from the time when the general nature of the charge is communicated to him, to claim that he be tried by a civil court instead of being tried by court martial, and where such a claim is made, the offence shall not be tried by court-martial :

Provided that before the trial of any person to whom this sub-section applies and as soon as practicable after arrest the general nature of the charge shall be communicated to him in writing and notice in writing shall at the same time be given in the prescribed form of his rights under this sub-section.

(7.) The expression " British subject " in sub-section (6.) of this section includes a woman who has married an alien but who before marriage was a British subject.

(8.) In the event of any special military emergency arising out of the present war the Governor-General may by proclamation forthwith suspend the operation of sub-section (6.) of this section, either generally or as respects any area specified in the proclamation, without prejudice, however, to any proceedings under this section which may be then pending in any civil court.

(9.) The regulations may authorize a civil court or court-martial, in addition to any other punishment, to order the forfeiture of any goods in respect of which an offence against this Act has been committed.

Aiding and abetting.

7. Whoever aids, abets, counsels, or procures, or is in any way directly or indirectly knowingly concerned, in the commission of any offence against this Act, shall be deemed to have committed that offence, and shall be punishable accordingly.

Power to order recognizances.

8.—(1.) When any person is convicted of an offence against this Act, the court before which he is convicted may, either in addition to or in lieu of any punishment provided for the offence, require him to enter into recognizances with or without sureties to comply with the provisions of the regulations or order in relation to which the offence was committed.

(2.) If any person fails to comply with an order of the Court requiring him to enter into recognizances, the Court may order him to be imprisoned for any term not exceeding six months.

Onus of proof.

8. If any question arises on any proceedings under any order made in pursuance of this Act, or with reference to anything done or proposed to be done under any such order, whether any person is an alien or not, the onus of proving that that person is not an alien shall lie upon that person.

Onus of proof.

9. If any question arises on any proceedings under any order made in pursuance of this Act, or with reference to anything done or proposed to be done under any such order, whether any person is an alien or not, or is an alien of a particular class or not, the onus of proving that that person is not an alien or, as the case may be, is not an alien of that class, shall lie upon that person.

Revocation or alteration of order.

10. The Governor-General may by order published in the *Gazette* revoke alter or add to any order made in pursuance of this Act as occasion requires.

Act not to derogate from other powers.

11. All powers given under this Act or under any instrument issued in pursuance of this Act shall be in addition to and not in derogation of any other powers exercisable apart from this Act.

WAR PRECAUTIONS BILL (1915).

SCHEDULE OF THE AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES.

Page 3, clause 4, sub-clause (6.), omit lines 40 to 47 inclusive and insert—

“(6.). Notwithstanding the preceding provisions of this section, no person other than an alien enemy or a person subject to the Naval Discipline Act or to Military Law shall be tried by court-martial for an offence against this Act.”

Page 4, clause 4, omit sub-clause (7.).

Page 4, clause 4, at end of sub-clause (8.) insert—

“Provided that while such proclamation is in force, any sentence passed by a court-martial against a person to whom sub-section (6.) of this section applies shall be referred to the Governor-General for confirmation, mitigation, or remission.”

C. GAVAN DUFFY,
Clerk of the House of Representatives.

House of Representatives,
29th April, 1915.



1923

1914-15.

THE PARLIAMENT OF THE COMMONWEALTH.

HOUSE OF REPRESENTATIVES

NOTICE OF PROPOSED AMENDMENT.

WAR PRECAUTIONS BILL (1915).

Mr. W. Maloney—

NEW CLAUSE.

Notwithstanding anything contained in any Act, in all cases a soldier or any civilian not subject to the Naval Discipline Act or to Military Law shall, upon request, be provided with equal legal assistance to that of the prosecution.

28th April, 1915.

