

AFFIDAVIT

NUMBER 33.

EXTRACTS

Re. TREASON +

MISPRISON OF TREASON

+ OTHER INDICHTABLE
OFFENCES

[CRIMINAL ACT
1958. VICTORIA]

ACCOMPANYING AFFIDAVIT (33)

IN THE COUNTY COURT OF VICTORIA AT MELBOURNE AP-16-1957

IN THE MATTER of an application under section 54 of the Vexatious Proceedings Act 2014

BETWEEN

THE ATTORNEY GENERAL FOR THE STATE OF VICTORIA

Plaintiff

And

BRIAN WILLIAM SHAW

Defendant

Re ^{some} INDICTABLE OFFENCES
7 December in Victoria

| | | | |
|---------------------|--------------------|------------------|-----|
| Date of Document: | 2016 | Solicitors Code: | N/A |
| Filed on behalf of: | The Applicant | Telephone: | |
| Prepared by: | Brian William Shaw | DX: | N/A |
| | | Ref: | N/A |

I, Brian William Shaw, c/- of PO Box 800 Werribee Victoria do state and affirm the following:-

1. I STATE THAT THIS AFFIDAVIT
EXHIBITS EXTRACTS FROM THE 1958
CRIMINAL ACT VICTORIA.

2. TREASON AND MISPRISON OF TREASON
SECTION 322 E

Brian Shaw M. Dawson

3. Sections 316. 81. 92
181. 321. 321A. 321M
323. 325. 326.
CONSPIRACY TO CHEAT ~~AND DEFRAUD~~
320. 321P.

AFFIRMED By. Russell

At. Geisborne

DATE. Seventh of December 2016

WITNESS C.M. Clemson

CARMEL CLEMSON JP
3/84 HAMILTON STREET
GISBORNE 3437
JUSTICE OF THE PEACE FOR VICTORIA
REG. NO 12356

Crimes Act 1958 - SECT 322E (Victoria)

Treason and misprision of treason not affected

Nothing in this Part shall be taken to affect directly or indirectly any matter of law or practice applicable to treason or misprision of treason.

Plus — Common Law .

Crimes Act 1958 - SECT 316 (Victoria)

Unlawful oaths to commit treason, murder etc.

①

Every person who-
administers or is present at and consents to the
administering of any oath or engagement in the nature of
an oath purporting to bind the person who takes it to
commit treason or murder; or takes any such oath or
engagement not being compelled to do so; or induces or
attempts to induce any person to take any such oath or
engagement - shall be guilty of an indictable offence, and
shall be liable to level 5 imprisonment (10 years
maximum).

Crimes Act 1958 - SECT 316 (Victoria)

Unlawful oaths to commit treason, murder etc.

(2) Every person who-
administers or is present at and consents to the
administering of any oath or engagement in the nature of
an oath purporting to bind the person who takes it to act in
any of the ways following (that is to say):-

(ii) to commit any indictable offence other than treason or
murder; shall be guilty of an indictable offence, and shall
be liable to level 6 imprisonment (5 years maximum).

(vii) not to reveal or discover any unlawful association
society or confederacy or any illegal act done or to be
done or any illegal oath or engagement that may have been
administered or tendered to or taken by himself or any
other person or the import of any such oath or
engagement; or shall be guilty of an indictable offence,
and shall be liable to level 6 imprisonment (5 years
maximum).

Crimes Act 1958 - SECT 81 (Victoria)

Obtaining property by deception

A person who by any deception dishonestly obtains property belonging to another, with the intention of permanently depriving the other of it, is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

Crimes Act 1958 - SECT 82 (Victoria)

Obtaining financial advantage by deception

A person who by any deception dishonestly obtains for himself or another any financial advantage is guilty of an indictable offence and liable to level 5 imprisonment (10 years maximum).

Crimes Act 1958 - SECT 181 (Victoria)

Aiding and abetting offences within or outside Victoria

Every person who being within Victoria knowingly aids, abets, counsels, or procures, or who attempts or takes part in or is in any way privy to-
doing any act or thing in contravention of this subdivision;
doing any act or thing outside Victoria, or partly within and partly outside Victoria, which if done within Victoria would be in contravention of this subdivision-
shall be guilty of an indictable offence, and shall- be liable if a corporation to a level 5 fine and if any other person to level 5 imprisonment (10 years maximum) or a level 5 fine or both.

Crimes Act 1958 - SECT 321 (Victoria)

Conspiracy to commit an offence

Subject to this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which will involve the commission of an offence by one or more of the parties to the agreement, he is guilty of the indictable offence of conspiracy to commit that offence.

Crimes Act 1958 - SECT 321A (Victoria)

Agreements to commit offences outside Victoria

The expression the commission of an offence in section 321(1) extends to the commission of an offence against a law in force only in a place outside Victoria if, but only if- the necessary elements of that offence include elements which, if present or occurring in Victoria, would constitute an offence against a law in Victoria; and one or more of the persons referred to in section 321(1) is or are in Victoria when the agreement referred to in that subsection is made.

Where all parties to an agreement are outside Victoria when it is made, section 321 shall apply in relation to it if, but only if, that agreement is to pursue a course of conduct which, if the agreement is carried out in accordance with their intentions, will necessarily amount to or involve the commission of an offence against a law in force in Victoria.

Crimes Act 1958 - SECT 321M (Victoria)

Attempt

A person who attempts to commit an indictable offence is guilty of the indictable offence of attempting to commit that offence.

Crimes Act 1958 - SECT 323 (Victoria)

Abettors in indictable offences triable as principal offenders

A person who aids, abets, counsels or procures the commission of an indictable offence may be tried or indicted and punished as a principal offender.

Crimes Act 1958 - SECT 325 (Victoria)

Accessories

Where a person (in this section called the principal offender) has committed a serious indictable offence (in this section called the principal offence), any other person who, knowing or believing the principal offender to be guilty of the principal offence or some other serious indictable offence, without lawful authority or reasonable excuse does any act with the purpose of impeding the apprehension, prosecution, conviction or punishment of the principal offender shall be guilty of an indictable offence.

(4) A person convicted of an offence against subsection (1) shall be liable- if the principal offence is one for which the penalty is level 1 imprisonment (life) to level 3 imprisonment (20 years maximum); or

Crimes Act 1958 - SECT 326 (Victoria)

Concealing offences for benefit

Where a person has committed a serious indictable offence, any other person who, knowing or believing that the offence, or some other serious indictable offence, has been committed and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts any benefit for not disclosing that information shall be guilty of a summary offence and liable to level 8 imprisonment (1 year maximum).

For the purposes of this section a person shall be deemed to accept a benefit if he accepts or agrees to accept any benefit or advantage, or the promise of any benefit or advantage, either to himself or to another, whether or not the benefit or advantage is in money or money's worth.

(5) The compounding of an offence other than treason shall not be an offence otherwise than under this section.

Conspiracy to Cheat and Defraud

In Victoria, Crimes Act s.321F abolishes the common law offence of conspiracy but preserves the separate common law offences of conspiracy to cheat and defraud and conspiracy to defraud. A statutory offence of conspiracy is defined by s.321:

- (1) Subject to this Act, if a person agrees with any other person or persons that a course of conduct shall be pursued which will involve the commission of an offence by one or more of the parties to the agreement, he is guilty of the indictable offence of conspiracy to commit that offence.
- (2) For a person to be guilty under sub-section (1) of conspiracy to commit a particular offence both he and at least one other party to the agreement--
 - (a) must intend that the offence the subject of the agreement be committed; and
 - (b) must intend or believe that any fact or circumstance the existence of which is an element of the offence will exist at the time when the conduct constituting the offence is to take place.

Agreements to commit an offence outside Victoria are included: s.321A; *R v Hamilton-Byrne* [1995] 1 VR 129. The acquittal of an alleged co-conspirator is inconsequential unless inconsistent: s.321B; *R v Darby* (1982) 148 CLR 668 and, though concerning alleged completed offences, *Osland v R* [1998] HCA 75, (1998) 197 CLR 31.

If the prosecution believes it has effective count for a substantive offence then it should proceed with those counts. If there is some real basis for doubting that the offence had been committed there may perhaps be justification in alleging a conspiracy. Generally speaking, it is undesirable that conspiracy should be charged when a substantive offence has been committed and there is a sufficient and effective count that this offence has been committed. *Hoar v R* [1981] HCA 67, (1981) 148 CLR 32.

As to common law conspiracy to defraud under Victorian law, see *R v Walsh and Harney* [1984] VR 474. As to extra-territoriality of common law conspiracy to defraud, see *Lipohar v R* [1999] HCA 65, (1999) 200 CLR 48. The requirement of nexus should be liberally applied; a real connection with the jurisdiction will suffice. This seems to displace a narrower view of extra-territoriality taken in *Re Hamilton-Byrne* [1995] 1 VR 129.

For presentment of conspiracy, conspiracy to cheat and defraud or conspiracy to defraud, the *approval of the Director of Public Prosecutions is required*: s.321(4), s.321F(4).

Crimes Act 1958 - SECT 320

Maximum term of imprisonment for certain common law offences

An offence at common law specified in column 1 of the Table is punishable by the maximum term of imprisonment specified opposite it in column 2 of the Table.

| <i>Column 1</i> | <i>Column 2</i> |
|--|---|
| <i>Common law offence</i> | <i>Maximum Term of Imprisonment</i> |
| Affray | Level 6 imprisonment (5 years maximum) |
| Attempt to pervert the course of justice | Level 2 imprisonment (25 years maximum) |
| Breach of prison | Level 6 imprisonment (5 years maximum) |
| Bribery of public official | Level 5 imprisonment (10 years maximum) |
| Common assault | Level 6 imprisonment (5 years maximum) |
| Conspiracy to cheat and defraud | Level 4 imprisonment (15 years maximum) |
| Conspiracy to defraud | Level 4 imprisonment (15 years maximum) |
| Criminal defamation | Level 5 imprisonment (10 years maximum) |
| Embracery | Level 4 imprisonment (15 years maximum) |
| False imprisonment | Level 5 imprisonment (10 years maximum) |
| Kidnapping | Level 2 imprisonment (25 years maximum) |
| Misconduct in public office | Level 5 imprisonment (10 years maximum) |
| Perverting the course of justice | Level 2 imprisonment (25 years maximum) |
| Public nuisance | Level 6 imprisonment (5 years maximum) |
| Riot | Level 5 imprisonment (10 years maximum) |
| Rout | Level 6 imprisonment (5 years maximum) |
| Unlawful assembly | Level 6 imprisonment (5 years maximum). |

Crimes Act 1958 - SECT 321P

Penalties for attempt

(1) A person convicted of attempting to commit an offence is liable-

(a) if the penalty for the relevant offence is set out by reference to an expression specified in column 1 of the Table, to the penalty set out opposite it in column 2 of the Table:

| <i>Column 1</i> | <i>Column 2</i> |
|--|--|
| Level 1 imprisonment (life) | Level 2 imprisonment (25 years maximum) |
| Level 2 imprisonment (25 years maximum) | Level 3 imprisonment (20 years maximum) |
| Level 2 fine (3000 penalty units maximum) | Level 3 fine (2400 penalty units maximum) |
| Level 3 imprisonment (20 years maximum) | Level 4 imprisonment (15 years maximum) |
| Level 3 fine (2400 penalty units maximum) | Level 4 fine (1800 penalty units maximum) |
| Level 4 imprisonment (15 years maximum) | Level 5 imprisonment (10 years maximum) |
| Level 4 fine (1800 penalty units maximum) | Level 5 fine (1200 penalty units maximum) |
| Level 5 imprisonment (10 years maximum) | Level 6 imprisonment (5 years maximum) |
| Level 5 fine (1200 penalty units maximum) | Level 6 fine (600 penalty units maximum) |
| Level 6 imprisonment (5 years maximum) | Level 7 imprisonment (2 years maximum) |
| Level 6 fine (600 penalty units maximum) | Level 7 fine (240 penalty units maximum) |
| Level 7 imprisonment (2 years maximum) | Level 8 imprisonment (1 year maximum) |
| Level 7 fine (240 penalty units maximum) | Level 8 fine (120 penalty units maximum) |
| Level 8 imprisonment (1 year maximum) | Level 9 imprisonment (6 months maximum) |
| Level 8 fine (120 penalty units maximum) | Level 9 fine (60 penalty units maximum) |
| Level 9 imprisonment (6 months maximum) | Level 10 fine (10 penalty units maximum) |
| Level 9 fine (60 penalty units maximum) | Level 10 fine (10 penalty units maximum) |
| Level 10 fine (10 penalty units maximum) | Level 11 fine (5 penalty units maximum) |
| Level 11 fine (5 penalty units maximum) | Level 12 fine (1 penalty unit maximum) |
| Level 12 fine (1 penalty unit maximum) | Level 12 fine (1 penalty unit maximum) |