

CONTRACEPTIVES.

No. 61 of 1985.

AN ACT to amend the Contraceptives Act 1939.

[Assented to 5 November 1985.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the *Contraceptives Amendment Act 1985*.

Short title
and principal
Act.

(2) In this Act the Contraceptives Act 1939 is referred to as the principal Act.

Reprint
authorized
7 April 1971
and
amended by
Act No. 102
of 1972.

Commence-
ment.

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

Sections 2
and 3
repealed and
sections 2, 3,
4, 4A, 4B
and 4C
substituted.

3. Sections 2 and 3 of the principal Act are repealed and the following sections are substituted—

Interpreta-
tion.

“ 2. (1) In this Act, unless the contrary intention appears—

“authorized person” means—

- (a) a person; or
- (b) a person belonging to a class of persons,

authorized under subsection (2);

“contraceptive” means any contrivance or appliance for securing, or reputed to secure, by the use thereof before, during or after sexual intercourse between human beings that such intercourse may take place without resulting in or with less likelihood of resulting in conception, and includes any substance which is or is reputed to be effective or of use for that purpose;

“permit” means permit granted under section 4A and in force;

“public place” includes—

- (a) every street, notwithstanding that such may be formed on private property;
- (b) any park, garden, reserve, or other place of public recreation or resort;
- (c) any railway station platform or carriage;

- (d) any sea beach or river beach, and any wharf, pier or jetty;
- (e) any tram or trolley bus, and any vehicle licensed as a passenger vehicle for the carriage of passengers;
- (f) any passenger ship, vessel or boat plying for hire;
- (g) any public garage;
- (h) any church, chapel, or other building where divine service is being publicly held;
- (i) any school or the land or premises in connection therewith;
- (j) any public hall, theatre, or room in which any public concert, theatrical representation, or other public entertainment is being held or performed or is taking place;
- (k) any market or fair;
- (l) any auction room or mart or place while a sale by auction is there proceeding;
- (m) any public lavatory or sanitary convenience;
- (n) any racecourse, cricket ground, football ground, or other sports or athletic ground, and such other place to which the public, whether upon or without payment for admittance, have or are permitted to have access;

- (o) any place of public resort;
- (p) any open place to which the public, whether upon or without payment for admittance, have, or are permitted to have, access,

but does not include a registered pharmacy or any licensed premises within the meaning of the Liquor Act 1970;

“registered pharmacy” means pharmacy registered under section 23 of the Pharmacy Act 1964;

“shop” has the meaning given by section 5 of the Factories and Shops Act 1963, but does not include a vending machine;

“shop keeper” has the meaning given by section 5 of the Factories and Shops Act 1963;

“street” includes every highway and every public bridge, road, street, lane, footway, footpath, square, court, alley or passage, whether a thoroughfare or not, and includes any doorway or open porch adjoining any street;

“the Commissioner” means the person holding or acting in the office of Commissioner of Health in the Department;

“the Committee” means the Contraceptives Advisory Committee established by section 3 (1);

“the Department” means the Department of the Public Service of the State principally assisting the Minister in the administration of this Act;

“vending machine” means machine or mechanical device used or capable of being used for selling or supplying an article without any intervention or attention by or on behalf of the vendor at the time of that sale or supply.

(2) The Minister may by notice published in the *Gazette*—

(a) authorize a person or class of persons for the purposes of this Act;

or

(b) revoke or amend an authorization made under this subsection.

(3) A reference in this Act to selling by retail includes a reference to bartering, offering or attempting to sell by retail, receiving for sale by retail, having in possession for sale by retail, exposing for or on sale by retail, sending, forwarding or delivering for sale by retail or causing or permitting to be sold by retail or offered for sale by retail.

3. (1) There is hereby established a committee to be known as the Contraceptives Advisory Committee.

Establishment, composition and procedure of Contraceptives Advisory Committee.

(2) The Committee shall consist of 6 members appointed by the Minister of whom—

- (a) one shall be the Director, Communicable Disease Control Branch, in the Department or another officer of that Branch nominated by him;
 - (b) one shall be a person nominated by the Permanent Head of the Department of Consumer Affairs;
 - (c) one shall be a person nominated by the body known as the Pharmacy Guild of Australia (W.A. Branch);
 - (d) one shall be a person nominated by the Retail Traders Association of W.A. (Inc.);
 - (e) one shall be a person nominated by the Family Planning Association of W.A. (Inc.); and
 - (f) one shall be a member of the public chosen by the Minister.
- (3) The officer of the Department referred to in subsection (2) (a) shall be the chairman of the Committee.
- (4) At any meeting of the Committee—
- (a) the chairman of the Committee shall preside, but if he is absent the other members of the Committee present shall elect one of their number to preside;
 - (b) each member of the Committee present has a deliberative vote and, in the event of an equality of votes, the person presiding at that meeting shall also have a casting vote; and
 - (c) any 4 members of the Committee constitute a quorum.

(5) A member of the Committee shall be—

- (a) appointed for such period not exceeding 3 years as is specified in the instrument of his appointment; and
- (b) eligible for reappointment.

(6) Each member of the Committee who is not an officer of the Public Service of the State and is not employed by a State instrumentality shall be entitled to such remuneration and allowances as the Minister from time to time determines on the recommendation of the Public Service Board.

(7) The Minister may appoint a person to the office of Secretary of the Committee, which office may be held in conjunction with any office under the Public Service Act 1978.

(8) Without prejudicing the application of other sections of the Interpretation Act 1984 to this Act, subsections (1) (a) and (b), (2) and (3) of section 52 of that Act apply in relation to an appointment made under subsection (2) or (7).

(9) To the extent that its own procedure is not set out in this section, the Committee shall determine its own procedure.

4. The functions of the Committee are—

Functions of
Committee.

- (a) to receive and consider applications for permits and to make recommendations to the Commissioner on those applications; and
- (b) to consider and make recommendations on any matter—
 - (i) referred to it by the Minister or the Commissioner; or

- (ii) relevant to this Act which the Committee considers should be brought to the attention of the Minister.

Applications
for permits.

4A. (1) A shop keeper who wishes to sell condoms by retail in a shop occupied by him may apply for a permit to do so in accordance with this section.

(2) An application under subsection (1) shall be—

- (a) made in the form approved by the Commissioner;
- (b) accompanied by such fee as is prescribed;
- (c) supported by such information as the Committee requires; and
- (d) lodged with the Committee.

(3) The Committee shall, on receiving an application lodged with it under subsection (2), consider that application and forward that application, together with its recommendation thereon, to the Commissioner.

(4) The Commissioner may, on receiving an application, together with a recommendation, forwarded to him under subsection (3), by writing served on the applicant concerned—

- (a) grant the permit applied for, subject to such conditions, if any, as he thinks fit to impose; or
- (b) refuse to grant the permit applied for.

(5) If the Commissioner does not within—

- (a) a period of 60 days; or
- (b) such period longer than 60 days as is agreed between the Commissioner and the applicant concerned,

after an application is lodged with the Committee under subsection (2) make a decision under subsection (4) on the application, he shall be deemed to have refused under subsection (4) to grant the permit applied for on the expiry of the period referred to in paragraph (a) or (b), as the case requires.

(6) The Commissioner shall, if he grants a permit under subsection (4), issue to the applicant a permit—

- (a) in a form approved by the Commissioner;
- (b) setting out such conditions, if any, as are imposed under that subsection; and
- (c) specifying the shop to which it relates.

4B. (1) A permit shall remain in force until—

Revocation,
suspension
and
surrender
of permits.

- (a) revoked under subsection (2); or
- (b) surrendered under subsection (3),

but shall be deemed not to be in force while suspended under subsection (2).

(2) The Commissioner may, if the holder of a permit—

- (a) does not comply with any condition to which the permit is subject or is convicted of an offence against this Act, revoke the permit or suspend it for such period as he thinks fit; or
- (b) ceases to occupy the shop in relation to which the permit was granted, revoke the permit.

(3) The holder of a permit may at any time surrender the permit to the Commissioner.

Appeals.

4C. (1) A person who is aggrieved by the decision of the Commissioner—

- (a) to impose a condition subject to which a permit is granted;
- (b) to refuse to grant a permit; or
- (c) to revoke or suspend a permit,

may within a period of 30 days after the making of that decision appeal in writing to the Minister against that decision.

(2) The Minister may, on an appeal being made to him under subsection (1)—

- (a) set aside or alter the decision appealed against; or
- (b) dismiss the appeal,

and the decision of the Minister on the appeal shall be final. ”.

4. Section 5 of the principal Act is amended— Section 5
amended.

(a) by deleting “Every person” and substituting the following—

“ (1) Every person ”;

(b) in paragraph (d) by deleting—

(i) “within the meaning of the Factories and Shops Act, 1920-1938,”; and

(ii) “any such” and substituting the following—

“ a ”;

and

(c) by inserting after the existing section the following subsection—

“ (2) Subsection (1) does not apply to or in relation to a person who, being the holder of a permit or being an agent, servant or employee of such a holder, sells a condom by retail in the shop to which the permit relates. ”.

5. Section 6 of the principal Act is amended by deleting— Section 6
amended.

(a) “Any police officer or constable” in subsection (1) and substituting the following—

“ An authorized person ”; and

(b) “any police officer or constable” in subsection (3) and substituting the following—

“ an authorized person ”.

Section 8
amended.

6. Section 8 of the principal Act is amended by deleting—

(a) “constable” and substituting the following—

“ authorized person ”; and

(b) “, 1902-1936” and substituting the following—

“ 1902 ”.
