

CONTRACEPTIVES.

3° GEO. VI., No. XI.

No. 11 of 1939.

AN ACT relating to the advertisement, exhibition, sale, and distribution of Contraceptives.

[Assented to 9th November, 1939.]

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

1. This Act may be cited as the *Contraceptives Act*, Short title.
1939.

2. In this Act, unless inconsistent with the context or subject matter—

Interpreta-
tion.
of. Vic. No.
1358, s. 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.

“Minister” means the Minister of the Crown for the time being and from time to time charged with the administration of this Act.

“Public place” includes and applies to—

- (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 licensed premises within the meaning of the Licensing Act, 1911-1934;
- (o) 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;
- (p) any place of public resort;
- (q) any open place to which the public, whether upon or without payment for admittance, have, or are permitted to have, access.

“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.

3. Subject to the Minister, this Act shall be administered by the Commissioner of Police.

Adminis-
tration.

4. (1) Any person who—

- (a) inserts or causes to be inserted in any newspaper, magazine, periodical, handbill, circular, programme or other document printed or prepared in this State any statement which is intended or apparently intended by such person or any other person to promote the sale or disposal of any contraceptive as such; or
- (b) publicly exhibits or causes to be publicly exhibited any such statement in view of persons who are in any public place; or
- (c) gratuitously sends or delivers or causes to be gratuitously sent or delivered to any person, or throws or leaves or causes to be thrown or left upon premises in the occupation of any person or upon any public place any handbill, circular, programme, or other document containing any such statement aforesaid

Publication,
etc., of ad-
vertisements
relating to
contracep-
tives an
offence.
cf. Vic. No.
4353, s. 3.

shall, subject as hereinafter provided in subsection (7) of this section be guilty of an offence against this Act.

(2) If in contravention of this section any statement is inserted in a newspaper printed and published in this State, then, subject as in this subsection hereinafter provided, the printer, publisher, and proprietor of such newspaper shall severally (and without excluding the liability of any other person) be guilty of an offence against this Act:

Liability of
proprietor,
etc., of news-
paper printed
in this State.

Provided that—

- (i) before any proceedings are taken under this subsection against any such printer, publisher, or proprietor, the Commissioner of Police shall notify him that the publication of the statement complained of is an infringe-

cf. W.A.
Health Act,
1911-1937
(No. 34 of
1911), s. 262
(6).

ment of this Act, and such printer, publisher, or proprietor shall not be liable to prosecution for an offence under this subsection, except in respect of an offence of the same or a similar nature after such notification; and

- (ii) in any proceedings against the printer, publisher, or proprietor of a newspaper for an offence under this subsection, it shall be a sufficient defence if such printer, publisher, or proprietor prove that the statement complained of was inserted in the newspaper without his knowledge and authority.

Liability of seller, etc., of newspaper, etc., not printed in this State.

(3) Any person who sells or distributes, or causes to be sold or distributed in this State any newspaper, magazine, periodical, handbill, circular, programme, or other document printed or prepared elsewhere than in this State containing any statement which is intended or apparently intended to promote the sale or disposal of any contraceptive as such shall, subject as in this subsection and in subsection (7) hereof hereinafter provided, be guilty of an offence against this Act: Provided that in any proceedings against any person for an offence under this subsection it shall be a sufficient defence if such person prove that he was not aware and had no reason to believe that such newspaper, magazine, periodical, handbill, circular, programme or other document (as the case may be) contained such statement.

Liability of officers of corporations.

(4) Where a person convicted of an offence under this section is a body corporate, every person, being a chairman or member of the governing body or director, manager, secretary, or officer of such body corporate, shall be deemed to have committed the like offence unless he proves that the act or omission which constituted the said offence took place without his knowledge or consent.

Liability of partners, etc.

(5) Where any person acting for or on behalf of any firm or other body of persons unincorporate is convicted of an offence under this section, every member of the firm and every member of the governing body (if any), and every officer of such body of persons unincorporate who is concerned in the management thereof, shall be deemed to have committed the like offence, unless he proves that the act or omission which constituted the said offence took place without his knowledge or consent.

(6) Where two or more persons commit or knowingly authorise or permit the commission of any offence under this section each of such persons shall be liable therefor, and the liability of each of them shall be independent of the liability of the other or others.

Liability of two or more persons.

(7) Nothing in this section shall apply or relate to—

This section not to apply to certain publications.

- (a) the insertion of any statement in any *bona fide* medical or pharmaceutical magazine, periodical, handbill, circular or document;
- (b) the sale or distribution on sale of any magazine, periodical, handbill, circular or document mentioned in paragraph (a) hereof;
- (c) the gratuitous sending or delivery of any magazine, periodical, handbill, circular, or document mentioned in paragraph (a) hereof to any duly qualified medical practitioner or to any registered pharmaceutical chemist; or
- (d) the gratuitous sending or delivery of any handbill, circular, or document mentioned in paragraph (a) hereof to any adult person at his request—
 - (i) by any duly qualified medical practitioner; or
 - (ii) by any registered pharmaceutical chemist carrying on in an open pharmacy the business of a chemist and druggist for the compounding or dispensing of drugs or medicines supplied on the order or prescription of a duly qualified medical practitioner—

but in any prosecution for an offence under this section the burden of proof that he is excused by reason of this subsection shall be on the defendant.

(8) This section shall be read and construed as being in aid of and not in derogation from any enactment or law relating to obscene or indecent publications.

Saving of law as to obscene and indecent publications.

5. Every person who—

- (a) exhibits or causes to be exhibited any contraceptive in view of persons who are in any public place;
- (b) goes from house to house hawking, selling, or offering or exposing for sale any contraceptive;

Prohibition against exhibiting, hawking, selling, etc., contraceptives in a public place; cf. Vic. No. 4358, s. 4.

- (c) sells or offers or exposes for sale any contraceptive in any public place; or
- (d) being a shopkeeper within the meaning of the Factories and Shops Act, 1920-1938, or an agent, servant, or employee of any such shopkeeper, gratuitously sends or delivers or causes to be sent or delivered gratuitously to any person any contraceptive,

shall be guilty of an offence against this Act.

Police authorised to seize contraceptives in certain cases.

6. (1) Any police officer or constable who finds any contraceptive being exhibited or sold or being offered or exposed for sale in contravention of section five of this Act may seize, and, if necessary, use force for the purpose, the contraceptive being so exhibited or sold or being so offered or exposed for sale, and may retain such contraceptive pending the prosecution of the person for an offence in relation to the contraceptive so seized and retained.

(2) If upon such prosecution the defendant is convicted, the court may order that such contraceptive be confiscated and be destroyed or otherwise dealt with as the court shall direct; but if the complaint is dismissed the said contraceptive shall be restored to the defendant.

(3) Any person who in any way interferes with, molests, or obstructs any police officer or constable in the exercise by him of the power of seizure conferred by subsection (1) of this section shall be guilty of an offence against this Act.

Penalties; cf. Vic. No. 4358, s. 5.

7. Every person who is guilty of any offence against this Act shall be liable for a first offence to a penalty of not more than ten pounds, for a second offence to a penalty of not less than five pounds and not more than thirty pounds, and for any subsequent offence to a penalty of not less than ten pounds and not more than fifty pounds.

Procedure.

8. Prosecutions for offences against this Act may be commenced upon a complaint made by any person, may be conducted in court by a police officer or constable on behalf of the complainant, and shall be dealt with summarily by justices under and in accordance with the provisions of the *Justices Act, 1902-1936*.