

INDECENT PUBLICATIONS.

No. 14 of 1902.

[As amended by Acts:

No. 6 of 1967, assented to 5th October, 1967;

No. 98 of 1972¹, assented to 6th December, 1972;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to suppress Indecent and Obscene Publications.

[Assented to 11th December, 1902.]

BE it enacted—

1. This Act may be cited as the *Indecent Publications Act 1902-1972*.

Short title.
Amended by
No. 98 of
1972, s. 1.

2. Any person who—

Amended by
No. 6 of 1967,
s. 2.

(1) prints, makes, sells publishes distributes or exhibits any obscene book, paper, newspaper, writing, picture, photograph, lithograph, drawing, or representation; or

Printing and
publishing
obscene
books, etc.
N.S.W. Act,
No. 12 of
1901, sec. 16,
s.s. (a).

¹ Came into operation 12th March, 1973; see G.G. 12/3/73, p. 699.
16030/4/73

Delivering
indecent
advertisements for
publication
in newspaper.
Ibid., s.s. (c).

- (2) gives or delivers to any other person any picture or printed or written matter which is of an indecent or obscene nature, with the intent that the same or a copy thereof, or any part of such matter or a copy thereof, should be published as an advertisement in any newspaper; or

Affixing, etc.,
indecent or
obscene
pictures or
writings, etc.
Ibid., s.s. (d).
Imp. Act
52 & 53
Vict., c. 18,
sec. 3.

- (3) (a) affixes to or inscribes on any house, building, wall, hoarding, gate, fence, pillar, post, board, tree, or any other thing whatsoever, so as to be visible to any person passing along or being in any street, public highway, footpath, or any other place whatsoever to which the public have access;
- (b) delivers or attempts to deliver or exhibits to any person;
- (c) leaves in or upon any place to which the public have access, or in or upon any house, shop, yard, garden, or other premises;
- (d) exhibits to public view in the window of any house or shop, or otherwise publishes

any indecent or obscene picture or printed or written matter; or

Sending
others to do
acts punishable
under
this section.
Ibid., s.s. (e).
Imp. Act
52 & 53
Vict., No. 18,
sec. 4.

- (4) gives or delivers to any other person any such pictures or printed or written matter, with the intent that the same, or some one or more thereof, or a copy of any such picture or printed or written matter should be affixed, inscribed, delivered, exhibited, or otherwise published in contravention of the provisions of this section; or

Posting
indecent
pictures and
printed
matter.
N.S.W. Act
No. 12 of
1901, sec. 16,
s.s. (f).

- (5) posts, or causes to be posted for transmission by post, any indecent or obscene picture or printed or written matter; or

(6) prints any picture or printed matter published or posted in contravention of this Act; or

Printing indecent pictures or printed matter.
Ibid., s.s. (g).

(7) publishes a newspaper containing any indecent or obscene advertisement,
shall be liable to a penalty not exceeding two hundred dollars, or to imprisonment not exceeding six months, with or without hard labour.

Publishing indecent advertisements or reports in newspaper.
Ibid., s.s. (b).
Penalty.
Ibid., sec. 16.

3. Informations for offences against this Act may be heard and determined summarily by any Stipendiary Magistrate in Petty Sessions.

Imposition of penalties.

4. Any advertisement, picture, or printed or written matter relating to any complaint or infirmity arising from or relating to sexual intercourse, or to nervous debility or female irregularities, or which might reasonably be construed as relating to any illegal medical treatment or illegal operation, shall be deemed to be indecent within the meaning of the Act.

Certain advertisements, etc., declared indecent.

Ibid., sec. 3, see Imperial Act, 52 & 53 Vict., c. 18, sec. 5.

5. Nothing in this Act relates to any work of recognised literary, artistic or scientific merit, or to the delivery or exhibiting in the window of any shop, or the posting or causing to be posted for transmission by post for any lawful purpose, of any *bona fide* medical work or treatise; but in any prosecution for an offence against this Act, the burden of proof that a publication is a *bona fide* medical work or treatise, or a work of recognised literary, artistic or scientific merit, shall lie on the defendant.

Savings.
Amended by No. 6 of 1967, s. 3.

6. In sections 7 to 14, both inclusive, of this Act—
“publication” includes any book, magazine, periodical, paper, newspaper, pamphlet or printed or written matter of any kind and any picture, photograph, lithograph, drawing or representation;

Interpretation.
Repealed and re-enacted by No. 98 of 1972, s. 3.

Indecent Publications.

"restricted publication" means—

- (a) any publication which is, by determination under section 10 of this Act, classified as a restricted publication; and
- (b) any publication within a class of publication which is, by determination under section 10 of this Act, classified as a restricted class of publication;

"the Committee" means the State Advisory Committee on Publications constituted under this Act.

State
Advisory
Committee
on Publica-
tions.
Added by
No. 98 of
1972, s. 4.

7. (1) For the purposes of this Act there shall be constituted a State Advisory Committee on Publications, which shall have the functions, powers and duties conferred or imposed on it by this Act.

(2) The Committee shall consist of not less than three nor more than seven persons appointed by the Governor, and of the persons so appointed—

- (a) at least one shall be a woman;
- (b) at least one shall be a recognised expert in literature, art or science; and
- (c) one shall be a practitioner as defined by section 3 of the Legal Practitioners Act, 1893.

(3) The Governor may appoint a member of the Committee to be the chairman thereof.

(4) Subject to this section, each member of the Committee shall hold office for a term of five years.

(5) The office of any member of the Committee becomes vacant if he—

- (a) resigns the office by writing addressed to the Minister;

- (b) attains the age of sixty-five years; or
- (c) is removed from the office by the Governor for disability, insolvency, neglect of duty or misconduct.

(6) Where a vacancy occurs in the office of a member, the Governor may appoint a person to the vacant office for the residue of the term for which the predecessor was appointed, but where the member whose office became vacant held the qualifications specified in paragraph (a), (b) or (c) of subsection (2) of this section, the person so appointed shall have the qualifications specified in paragraph (a), (b) or (c) as the case requires.

(7) Members of the Committee shall be paid such remuneration and allowances as are from time to time determined by the Governor.

8. (1) The Minister, the chairman or any three members of the Committee may call a meeting of the Committee.

Meetings of
Committee,
etc.
Added by
No. 98 of
1972, s. 5.

(2) At any meeting of the Committee—

- (a) the chairman shall preside but if the chairman is not present, the members present shall select one of their number to preside;
- (b) a majority of the members for the time being appointed to the Committee constitutes a quorum;
- (c) questions arising at the meeting shall be decided, in open voting, by a majority of the members present; and
- (d) a record shall be kept of the proceedings thereat.

(3) The powers of the Committee are not affected by any vacancy in the membership thereof and, if a quorum is present, all acts and proceedings of the Committee are valid and effectual notwithstanding the vacancy.

Powers and
functions of
Committee.
Added by
No. 98 of
1972, s. 6.

9. (1) The Minister may refer any publication or class of publication to the Committee for consideration of the publication or class of publication with the object of reporting to the Minister whether or not in the opinion of the Committee the publication or class of publication—

- (a) by reason of the nature or extent of references therein to sex, drug addiction, crime, violence, gross cruelty or horror or for any other reason, is undesirable reading for persons under the age of eighteen years and should be classified as a restricted publication or class of publication;
- (b) should be the subject of proceedings under section 2 of this Act.

(2) The Minister may refer to the Committee any other matter arising out of the administration of this Act for its report thereon.

(3) The Committee shall include in its report to the Minister the reasons for and matters taken into consideration in formulating its decision and each member of the Committee may make an individual report on the publication or class of publication or matter referred to the Committee.

Restricted
publications.
Added by
No. 98 of
1972, s. 7.

10. (1) (a) Where—

- (i) the Committee has made a report to the Minister for the purposes of paragraph (a) of subsection (1) of section 9 of this Act in respect of a publication or class of publication referred to it; or
- (ii) the National Literature Board of Review constituted under the Customs (National Literature Board of Review) Regulations of the Commonwealth, or a division of that Board, has, in relation to a publication or class of publication submitted or referred to it, made a report that indicates that the distribution of the publication or class of

publication should be restricted, or that the publication or class of publication is considered by the Board to be not unsuitable for distribution in Australia restricted to persons who are eighteen or more years of age,

the Minister, upon consideration of that report, may determine that the publication or class of publication shall be classified as a restricted publication or class of publication.

(b) The classification of a publication or class of publication as a restricted publication or class of publication shall, if the Minister so determines, extend not only to the publication or class of publication specified in the determination but to all subsequent editions, series, numbers or issues of that publication or class of publication, notwithstanding any reconstruction (whether by way of alteration in title, change of subject, characters, story or other features or otherwise) of such publication or class, and any such subsequent editions, series, numbers or issues shall for the purposes of this Act be a restricted publication or class of publication.

(2) A determination made by the Minister pursuant to subsection (1) of this section may be varied or revoked by the Minister.

(3) Notification of any determination or any variation or revocation of any determination shall be published in the *Gazette* and the determination or any variation or revocation thereof shall not take effect until so notified.

(4) Any person aggrieved by a determination made by the Minister under this section (not being a determination made upon the consideration of a report made by the National Literature Board of Review referred to in subparagraph (ii) of paragraph (a) of subsection (1) of this section) that a publication or class of publication shall be classified as a restricted publication or class of publication may appeal to the Court against the making of that determination.

(5) If, at the hearing of an appeal made under subsection (4) of this section, the person aggrieved satisfies the Court that the publication or class of publication to which the appeal relates is not undesirable reading for persons under the age of eighteen years, the Court may order that the publication or class of publication shall cease to be a restricted publication or class of publication.

(6) Upon the making of an order by the Court under subsection (5) of this section, the publication or class of publication specified in the order ceases to be a restricted publication or class of publication for the purposes of this Act.

(7) The procedure of the Court in relation to an appeal made under this section shall be as prescribed by the Rules of Court, or in the absence of those Rules, as the Court determines, and at the hearing of any appeal the Court may make such order as to costs as it thinks fit.

(8) In this section—

“person aggrieved” means—

- (a) an author or publisher of the publication or class of publication to which the appeal relates; or
- (b) any person selling the publication or class of publication in the ordinary course of the carrying on of his business;

“the Court” means The District Court of Western Australia.

Offences in
relation to
restricted
publications.
Added by
No. 98 of
1972, s. 8.

11. (1) Any person who in any street or public place, not being a shop,—

- (a) sells any restricted publication;
- (b) has any restricted publication in his possession apparently for the purpose of selling it in a street or public place, not being a shop; or

- (c) publishes, distributes or exhibits any restricted publication,

commits an offence against this section.

(2) Any person who in any place, not being a shop, exhibits any restricted publication in view of persons who are in any public place commits an offence against this section.

(3) Any person who—

- (a) in a shop sells, gives or distributes a restricted publication to a person under the age of eighteen years; or
- (b) in any place, not being a shop, sells a restricted publication to a person under the age of eighteen years,

commits an offence against this section.

(4) It is a defence to a complaint of an offence against subsection (3) of this section to show that the defendant believed, on reasonable grounds, that the person to whom he sold a restricted publication was not under the age of eighteen years.

(5) Any person who—

- (a) exhibits any restricted publication to public view in the window or doorway of any shop; or
- (b) in any street or public place, including a shop, advertises, or publishes, distributes or exhibits any advertising material in such a manner as to inform any person—
 - (i) that a publication is a restricted publication; or
 - (ii) that an identifiable place or person may be resorted to for the purpose of perusing or obtaining a publication referred to in that advertisement or advertising material in such a manner as to convey that it is a restricted publication,

commits an offence against this section, unless the advertising, publication, distribution or exhibition is done in good faith solely for the purpose of so informing only persons, or the servants or agents of persons, whose business is or includes the sale or distribution of publications.

(6) Any person convicted of an offence against this section shall be liable—

- (a) if the person convicted is a body corporate, to a penalty not exceeding two hundred and fifty dollars for a first offence and to a penalty not exceeding five hundred dollars for a second or subsequent offence;
- (b) in any other case, to a penalty not exceeding one hundred and twenty-five dollars or to imprisonment for a term not exceeding three months for a first offence, and to a penalty not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding six months for a second or subsequent offence.

(7) Where a person has been convicted of an offence against this section or where in respect of any person an offence against this section has been found proved, there shall be forfeited to Her Majesty—

- (a) in the case of an offence referred to in subsection (1), (2) or (3) of this section, all restricted publications found, at the time of the commission of the offence, in the possession or apparently under the control of that person;
- (b) in the case of an offence referred to in paragraph (a) of subsection (5) of this section, all restricted publications found, at the time of the commission of the offence, in the window or doorway of the shop in respect of which the offence was committed: or

- (c) in the case of an offence referred to in paragraph (b) of subsection (5) of this section, all advertising material of the nature referred to in that paragraph found, at the time of the commission of the offence, in the possession or apparently under the control of that person.

12. (1) The Minister, upon the recommendation of the Committee, may determine that any publication proposed to be published, sold or distributed shall not be the subject of proceedings under section 2 of this Act.

Certain publications not to be liable to prosecution. Added by No. 98 of 1972, s. 9.

(2) A determination made by the Minister pursuant to subsection (1) of this section may be revoked by the Minister.

(3) Notification of any determination or the revocation of any determination shall be published in the *Gazette* and the determination or any revocation thereof shall not take effect until so notified.

(4) Notwithstanding any other provision of this Act, no proceedings shall be instituted under section 2 of this Act in respect of any publication in respect of which a determination under this section is in force or any edition of any publication which edition was published at a time when a determination under this section in respect of the publication was in force.

13. (1) Subject to subsection (2) of this section, proceedings under the provisions of this Act in respect of any publication shall not be instituted without the consent of the Minister.

Approval of Minister required to institution of certain proceedings. Added by No. 98 of 1972, s. 10.

(2) Subsection (1) of this section does not apply to or in respect of proceedings under section 11 of this Act.

Limitation
on proceed-
ings in
certain
cases.

Added by
No. 98 of
1972, s. 11.

14. No proceedings shall lie or be brought, made or allowed by or in favour of any person against—

- (a) the Committee or any member of the Committee or any other person acting under the direction of the Committee in respect of any act done or omitted to be done in good faith, in the execution of or purportedly in the execution of any power or authority conferred on the Committee by this Act;
- (b) any person by reason only of his having, whether as a member of an advisory body or otherwise, expressed an opinion or tendered advice with respect to any work submitted to him or to any advisory body of which he is a member, under, or for the purposes of, any law of the Commonwealth, of this State or of any other State or any Territory of the Commonwealth, relating to publications.