

INDECENT PUBLICATIONS.

No. 39 of 1974.

AN ACT to amend the Indecent Publications Act,
1902-1973.

[Assented to 15th November, 1974.]

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 *Indecent Publications Act Amendment Act, 1974.* Short title.

(2) In this Act the Indecent Publications Act, 1902-1973 is referred to as the principal Act.

Reprinted as
approved for
reprint
1st May,
1973 and
amended by
Act No. 99
of 1973.

Citation.
amended.

(3) The principal Act as amended by this Act may be cited as the Indecent Publications and Articles Act, 1902-1974.

Commence-
ment.

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

Long title
amended.

3. The long title to the principal Act is amended by adding after the word "Publications" the words "and Articles".

Section 1A
added.

4. The principal Act is amended by adding after section 1 the following new section—

Interpre-
tation.

1A. (1) In this Act unless the contrary intention appears—

"article" includes—

(a) any cinematographic or other type of film, or videotape; and

(b) any gramophone record, wire, recording tape or other device or thing by or on which words or sounds are recorded and from which they are capable of being reproduced.

(2) For the purposes of this Act a record shall be deemed to be indecent or obscene if the words or sounds capable of being reproduced therefrom are indecent or obscene, and publication, in the case of a record, shall include the delivering of the record to any person or the playing of the record in the hearing of any person.

Section 2
amended.

5. Section 2 of the principal Act is amended—

(a) by adding after the section designation "2." the subsection designation "(1)";

(b) by adding after the passage "sells," in line one of paragraph (1) the passage "has in his possession, custody or control for sale or gain or apparently for sale or gain,";

- (c) by deleting the word "obscene" in line two of paragraph (1) and substituting the passage "indecent or obscene article,";
- (d) by adding after the word "obscene" in the penultimate line of paragraph (3) the passage "article,";
- (e) by deleting the word "pictures" in line two of paragraph (4) and substituting the passage "article, picture,";
- (f) by substituting for the word "picture" in line five of paragraph (4) the passage "article, picture,";
- (g) by adding after the word "obscene" in line two of paragraph (5) the passage "article,";
- (h) by deleting the passage "shall be liable to a penalty not exceeding two hundred dollars, or to imprisonment not exceeding six months, with or without hard labour." in the last three lines and substituting the words "commits an offence against this section.,"; and
- (i) by adding at the end thereof the following subsections—

(2) 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 five hundred dollars for a first offence, and to a penalty not exceeding one thousand dollars for a second or subsequent offence;
- (b) in any other case, to a penalty not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding three months for a first offence, and to a penalty not exceeding five hundred dollars or to imprisonment for a term not exceeding six months for a second or subsequent offence.

Offences by
corporations.

(3) Where a corporation is convicted of an offence against this section, every person who at the time of the commission of the offence was a director or member of the governing authority of the corporation or an officer concerned in the management of the corporation and who authorised or permitted the commission of the offence is guilty of the like offence.

(4) 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, the court shall, unless it is satisfied that in all the circumstances it would be unreasonable so to do, order that there shall be forfeited to Her Majesty and destroyed by the Commissioner of Police any indecent or obscene article, book, paper, newspaper, writing, picture, photograph, lithograph, drawing, representation, or printed matter in respect of which the offence was committed or proved. .

Section 7
amended.

6. Section 7 of the principal Act is amended by adding after subsection (7) the following subsection—

(8) The Minister shall appoint a member of the Committee or some other person to be the secretary of the Committee for the purposes of this Act. .

Section 10
amended.

7. Section 10 of the principal Act is amended by adding after subsection (8) the following subsection—

(9) Where the Minister has made a determination pursuant to subsection (1) of this section that a publication or class of publication and 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 of publication, shall

be classified as a restricted publication or class of publication, proceedings may be instituted under section 2 of this Act in respect of any subsequent edition, series, number or issue of that publication or class of publication notwithstanding that the determination so made by the Minister is still in force and applies to that subsequent edition, series, number or issue. .

8. The principal Act is amended by adding after section 11 the following new section—

Section 11A
added.

11A. (1) Any person who is carrying on or intends to carry on the business of distributing or selling publications, by wholesale or retail, may apply to the secretary of the Committee to be registered under this section.

Registration
of certain
persons.

(2) An application under this section shall contain full particulars of—

- (a) the name of the applicant;
- (b) each place at which he carries on or intends to carry on that business; and
- (c) the address to which the applicant desires notices under this section to be sent and such other particulars as the secretary may require,

and be accompanied by a fee of twenty-five dollars.

(3) Upon receipt of any application made in accordance with subsection (2) of this section, the secretary of the Committee shall—

- (a) enter the name and other particulars of the applicant in the register to be kept by him for the purposes of this section; and
- (b) issue to the applicant a certificate of his registration.

(4) The registration of a person under this section shall be valid for a period of twelve months and may from time to time thereafter

be renewed for periods of twelve months upon application made by the person accompanied by a fee of twenty-five dollars.

(5) Where a person registered under this section—

(a) commences to carry on the business of distributing or selling publications by wholesale or retail at any place not specified in his application for registration or renewal thereof; or

(b) ceases to carry on that business at a place previously specified in such an application,

he shall, within seven days, give notice thereof in writing to the secretary of the Committee.

(6) The secretary of the Committee shall cause to be sent to every person registered under this section—

(a) notice of every publication or class of publication which the Minister has determined shall be classified as a restricted publication and notice of any variation or revocation of such a determination; and

(b) notice that the Minister has consented to the institution of proceedings under section 2 of this Act in relation to any publication as soon as practicable after the Minister so gives his consent.

(7) A person shall not have in his possession for sale any restricted publication unless he has been registered under subsection (1) of this section.

(8) Any person who contravenes subsection (5) or subsection (7) of this section commits an offence.

Penalty: One hundred dollars. .

9. The principal Act is amended by adding after section 12 the following new section—

Section 12A added.

12A. (1) Where the business of selling or distributing publications is carried on in any premises a member of the Police Force may, without further authority than this subsection, enter those premises at any reasonable time and search for and seize any publications which appear to him to be indecent or obscene.

Search of premises for and seizure, etc., of indecent or obscene publications.

(2) Where a justice is satisfied by complaint on oath sworn by a member of the Police Force, that there is reasonable ground for suspecting that—

- (a) indecent or obscene publications are kept for the purpose of gain, or apparently for that purpose, in or on any premises specified in the complaint; or
- (b) one or more indecent or obscene publications have been sold, distributed, exhibited, lent or otherwise published in, from or at any premises specified in the complaint,

the justice may by warrant under his hand in the form in the Schedule to this Act, or in any like form, authorise any member of the Police Force to enter those premises with such assistance, and using such force, as may be necessary and to search for and seize any publications which appear to the member of the Police Force to be indecent or obscene found in or on those premises.

(3) Where any publications are seized by a member of the Police Force pursuant to subsection (1) of this section or to a warrant issued under subsection (2) of this section—

- (a) the member of the Police Force shall as soon as practicable thereafter cause to be delivered to the secretary of the Committee at least one copy of each publication or each edition thereof so seized;

- (b) such other copies of publications so seized as are not required by paragraph (a) of subsection (1) of this section to be delivered to the secretary of the Committee shall be retained by the Commissioner of Police until the return or the forfeiture and destruction of the publications seized has been determined under this Act; and
- (c) the Committee shall, as soon as practicable, consider the publications and report thereon as if the publications had been referred to it by the Minister under section 9 of this Act.

(4) Where—

- (a) a publication has been referred to the Committee pursuant to subsection (3) of this section; and
- (b) the Committee has reported that the publication should be neither classified as a restricted publication nor the subject of proceedings under section 2 of this Act,

the Commissioner of Police shall cause all copies of the publication seized under this section to be returned to the person from whom they were seized.

(5) Where—

- (a) a publication has been referred to the Committee pursuant to subsection (3) of this section; and
- (b) the Committee has reported that the publication should be classified as a restricted publication,

the secretary of the Committee shall cause notice of the Committee's report to be served as soon as practicable on the person from whom the publication was seized and the Commissioner of Police shall cause all copies of the

publication seized under this section to be returned to the person from whom they were seized as soon as practicable after—

- (c) the publication in the *Government Gazette* of a determination by the Minister so classifying the publication; or
- (d) the expiration of twenty-eight days after the Committee so reports,

whichever first happens.

(6) Where—

- (a) a publication has been referred to the Committee pursuant to subsection (3) of this section; and
- (b) the Committee has reported that the publication should be the subject of proceedings under section 2 of this Act,

the secretary of the Committee shall cause notice of the Committee's report to be served as soon as practicable on the person from whom the publication was seized, and if proceedings under section 2 of this Act in respect of that publication have not been commenced within two months after the Committee has so reported, the person from whom the publication was seized may, at any time within the next succeeding period of two months, by complaint summon the member of the Police Force by whom the publication was seized to appear before a court of petty sessions to show cause why all copies of the publication so seized from him should not be returned.

(7) Where at the expiration of the period of two months within which a person from whom copies of a publication have been seized under this section was entitled to commence proceedings pursuant to subsection (6) of this section for the return of those copies to him—

- (a) the person has failed to institute proceedings; and

- (b) proceedings under section 2 of this Act have not been commenced against that person in relation to those copies,

the copies so seized under this section are by force of this section forfeited to Her Majesty and shall be destroyed by the Commissioner of Police.

(8) Any proceedings instituted under subsection (6) of this section shall be conducted by a stipendiary magistrate sitting alone.

(9) In any proceedings instituted under subsection (6) of this section—

(a) the court shall, if it is of opinion that a publication the subject of the proceedings is not indecent or obscene, order the Commissioner of Police to return all copies of that publication seized under this section to the person or persons from whom they were seized; and

(b) the court shall, if it is of opinion that a publication the subject of the proceedings is indecent or obscene, order that all copies of that publication seized under this section shall be forfeited to and destroyed by the Commissioner of Police.

(10) Nothing in this section shall operate so as to affect the right of a person to institute proceedings under section 2 of this Act in relation to any publications seized under the authority of this section or so as to affect the liability of any person for an offence under that section.

Section 14
amended.

10. Section 14 of the principal Act is amended—

- (a) by deleting the word “or” appearing immediately after paragraph (a);

(b) by deleting the passage "publications." in the last line of paragraph (b) and substituting the passage "publications; or"; and

(c) by adding the following new paragraph—

(c) the Crown, the Minister, the Commissioner of Police or any member of the Police Force 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, authority or duty conferred or imposed by section 12A of this Act. .

11. The principal Act is amended by adding a Schedule as follows— Schedule added.

SCHEDULE.

Warrant.

S. 12A.

To the principal police officer at _____, in the State of Western Australia, and all other police officers in the said State.

WHEREAS it appears to me _____ a Justice of the Peace, by the complaint on oath of (A.B.) _____ of _____ in the State of Western Australia, a member of the Police Force, that there is reasonable ground for suspecting that—

(a) indecent or obscene publications are kept for the purpose of gain or apparently for that purpose, in or on the premises situated at
(here describe the land, building, vehicle, vessel or place specified in the complaint);

OR

(b) one or more indecent or obscene publications have been sold, distributed, exhibited, lent or otherwise published in, from or on the premises situated at
(here describe the land, building, vehicle, vessel or place specified in the complaint).

This is therefore, in the name of Her Majesty, to authorise and require you to enter the said premises, with such assistance and using such force as may be necessary, whether

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by breaking open doors or otherwise, and there to search diligently for and to seize all publications which appear to you to be indecent or obscene and to cause all such publications to be dealt with according to law.

JUSTICE OF THE PEACE.

Given under my hand at
this day of

19 . . .
