

INDECENT PUBLICATIONS.

No. 98 of 1972.

**AN ACT to amend the Indecent Publications Act,
1902-1967.**

[*Assented to 6th December, 1972.*]

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, 1972.* Short title and citation.

(2) In this Act the Indecent Publications Act, 1902-1967 is referred to as the principal Act.

(3) The principal Act as amended by this Act may be cited as the Indecent Publications Act, 1902-1972.

Commence-
ment.

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

Section 6
repealed and
substituted.

3. Section 6 of the principal Act is repealed and the following section enacted in its stead—

Interpre-
tation.

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;

“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. .

Section 7
added.

4. The principal Act is amended by adding a section as follows—

State
Advisory
Committee
on Publica-
tions.

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.

Section 8
added.

5. The principal Act is amended by adding a section as follows—

Meetings of
Committee,
etc.

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

(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. .

Section 9
added.

6. The principal Act is amended by adding a section as follows—

Powers and
functions of
Committee.

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. .

7. The principal Act is amended by adding a section as follows—

Section 10
added.

10. (1) (a) Where—

Restricted
publications.

(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.

8. The principal Act is amended by adding a section as follows—

Section 11 added.

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

Offences in relation to restricted publications.

- (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.

Section 12
added.

9. The principal Act is amended by adding a section as follows—

Certain pub-
lications not
to be liable
to prosecu-
tion.

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.

(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.

10. The principal Act is amended by adding a section as follows—

Section 13
added.

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.

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

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

Section 14
added.

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

Limitation on
proceedings
in certain
cases.

- (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; or
- (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. .