

## OBSCENE AND INDECENT PUBLICATIONS (AMENDMENT) BILL, 1953.

### EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to amend the definition of “obscene publication” in section 3 of the Obscene and Indecent Publications Act, 1901-1946, to include publications that unduly emphasise horror, gross cruelty, matters of sex or crimes of violence;
- (b) to exempt “works of literary or artistic merit” from the operation of that Act.  
This exemption is in lieu of the present exemption of objects of art or literary works;
- (c) to constitute a Publications Committee consisting of seven members appointed by the Governor;
- (d) to prohibit any person from printing, publishing, reproducing, distributing, selling or offering for sale any publication if the Publications Committee is of opinion that that publication—
  - (i) is obscene;
  - (ii) would tend to encourage depravity or would tend to injure the morals of the public or of any section or class thereof; or
  - (iii) unduly emphasises horror, gross cruelty, matters of sex or crimes of violence,
 and makes an order in respect of that publication;
- (e) to confer a right of appeal to a District Court, on questions of law, from an order made by the Publications Committee;
- (f) to authorise the seizure of all publications in respect of which the Publications Committee has made an order and all printing presses, working plant and materials used for the purposes of those publications.

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1953.

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## A BILL

To amend the Obscene and Indecent Publications Act 1901, and certain other Acts in certain respects; and for purposes connected therewith.

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**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of  
 5 the same, as follows:—

**1.** (1) This Act may be cited as the "Obscene and Indecent Publications (Amendment) Act, 1953."

Short title,  
 citation and  
 commence-  
 ment.

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*Obscene and Indecent Publications (Amendment).*

(2) The Obscene and Indecent Publications Act 1901, as amended by subsequent Acts and by this Act, may be cited as the Obscene and Indecent Publications Act, 1901-1953.

5 (3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Obscene and Indecent Publications Act, 1901-1946, is amended—

Amendment of Act No. 12, 1901.

10 (a) by inserting in the definition of "Obscene publication" in section three after the words "any class or section thereof" the words "or unduly emphasises horror, gross cruelty, matters of sex or crimes of violence";

Sec. 3.  
(Interpretation.)

15 (b) (i) by omitting from paragraph (a) of section four the words "work or treatise" and by inserting in lieu thereof the words "or pharmaceutical book, pamphlet, magazine or periodical";

Sec. 4.  
(Exemption of medical works, objects of art and literary works.)

20 (ii) by omitting paragraph (b) of the same section and by inserting in lieu thereof the following paragraph:—

(b) works of literary or artistic merit.

25 (c) by inserting at the end of section five the following new paragraph:—

Sec. 5.  
(Power to issue special warrant to enter premises and search for and seize obscene publications.)

30 In this section and in section six of this Act the expression "obscene publications" shall be construed as including publications to which the provisions of subsection three of section twenty-one of this Act have been applied by an order made under subsection one of the said section twenty-one.

35 (d) by omitting from section sixteen the words "twenty pounds" and by inserting in lieu thereof the words "fifty pounds";

Sec. 16.  
(offences).

(e)

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(e) by inserting next after section nineteen the following new heading and sections:—

New secs.  
20, 21 and  
22.

*Publications Committee.*

Publications  
Committee.

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20. (1) There shall be constituted a Publications Committee (in this Act referred to as the Committee) which shall have and may exercise and perform the powers and authorities conferred upon it by this Act.

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(2) (a) The Committee shall consist of seven members who shall be appointed by the Governor.

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(b) One of such members shall in and by his appointment be the chairman of the Committee.

(c) Any person appointed as a member shall, subject to this section, hold office for a term of five years, and shall be eligible for reappointment from time to time.

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(3) The Governor may for any cause which he deems sufficient remove from office any member.

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(4) (a) If any member—  
(i) dies; or  
(ii) resigns his office by writing under his hand addressed to the Governor; or  
(iii) is absent from three consecutive meetings of the Committee except on leave granted by the Minister; or  
(iv) is removed by the Governor,  
his office shall thereupon become vacant.

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(b) The Governor may appoint a person to take the place of a member whose office has become vacant.

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Any person so appointed shall, subject to this section, hold office as a member for the residue of his predecessor's term of office.

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5 (5) The procedure for the calling of meetings of the Committee and the conduct of business at such meetings and the times at which such meetings shall be held shall be as determined by the Committee.

(6) Any four members of the Committee shall form a quorum, and any duly convened meeting at which a quorum is present shall be competent to transact any business of the Committee.

10 (7) At every meeting of the Committee the chairman shall preside, but if the chairman is absent from any meeting the members present shall elect a person from among their number to preside as chairman at that meeting.

15 (8) The members of the Committee may be paid such remuneration as the Governor may determine. The remuneration, if any, of the chairman or any member may be paid by way of salary or by way of fees for attendance at meetings.

20 (9) The Committee shall cause minutes of its decisions to be kept and cause minutes to be kept of its proceedings at formal meetings.

25 (10) No act or proceeding of the Committee shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced there was a vacancy or vacancies in the office or offices of any member or members of the Committee.

30 (11) No matter or thing done by the Committee or by any member thereof shall, if the matter or thing was done bona fide for the purpose of exercising or performing any power or authority conferred on the Committee by this Act, subject the members of the Committee or any of them personally to any action, liability, claim or demand whatsoever.

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5 (12) The provisions of the Public Service Act, 1902, as amended by subsequent Acts, shall not apply to or in respect of the appointment by the Governor of any member of the Committee, and any member so appointed shall not, in his capacity as such member, be subject to the provisions of such Act during his term of office.

10 21. (1) Where in the opinion of the Committee a publication—

Further provisions in relation to obscene publications.

- (a) is obscene;
- (b) would tend to encourage depravity or would tend to injure the morals of the public or of any class or section thereof; or
- (c) unduly emphasises horror, gross cruelty, matters of sex or crimes of violence,

20 the Committee may make an order declaring that the provisions of subsection three of this section apply to that publication.

25 Nothing in paragraphs (b) and (c) of this subsection affects the generality of the meaning of "obscene" in paragraph (a) of this subsection.

(2) Any order made under subsection one of this section shall be published in the Gazette and shall take effect from the date of such publication.

30 (3) Any person who, after an order has been published in the Gazette declaring that the provisions of this subsection apply to a publication and while that order remains in force, prints, publishes, reproduces, distributes, sells or offers for sale any edition or copy of that publication shall be guilty of an offence against this section and shall be liable—

- (a) if a body corporate—to a penalty not exceeding one hundred pounds;
- (ii)

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(b) if any other person—to a penalty not exceeding fifty pounds or to imprisonment for a term not exceeding six months.

5           (4) In this section “publication” includes any book, paper, newspaper or printed matter of any kind whatsoever or any writing, print, picture, photograph, lithograph, drawing or representation.

10           22. (1) (a) Where an order has been pub- Appeal.  
 15           lished in the Gazette pursuant to subsection two of section twenty-one of this Act declaring that the provisions of subsection three of that section apply to a publication any person who immediately before the order was published in the Gazette had copies of the publication concerned in his possession for distribution or sale or the author or publisher of the publication concerned may, within twenty-one days from the date on which the order was published in the Gazette, appeal, as to questions of law only, to a District Court from that order.

25           (b) The District Court to which any such appeal is made shall have jurisdiction to hear and decide any appeal under this section and the provisions of the District Courts Act, 1912, as amended by subsequent Acts, shall, with such modifications as may be necessary to give effect to this section, apply to and in respect of such appeal.

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The decision of the District Court upon the appeal shall be final.

35           (c) Without prejudice to the generality of paragraph (b) of this subsection, the District Court may, on any appeal under this subsection, make such order as to costs as it thinks fit.

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(2) An order against the making of which an appeal is made under subsection one of this section shall remain in force pending the determination of the appeal.

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