

**OBSCENE AND INDECENT PUBLICATIONS
(AMENDMENT) ACT.**

Act No. 10, 1955.

Elizabeth II,
No. 10, 1955. An Act to make further provision with respect to obscene publications and advertisements; to provide for the registration of distributors of printed matter; for these and other purposes to amend the Obscene and Indecent Publications Act, 1901, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 1st April, 1955.]

BE

Obscene and Indecent Publications (Amendment) Act.

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BE 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 the same, as follows:—

No. 10, 1955.

1. (1) This Act may be cited as the "Obscene and Indecent Publications (Amendment) Act, 1955."

Short title,
citation
and com-
mencement.

(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, 1901-1955.

(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.

(a) (i) by omitting from section three all words beginning with the words " 'Obscene publication' " and ending with the words "any class or section thereof";

Sec. 3.
(Interpreta-
tion.)

(ii) by inserting at the end of the same section the following new definition and subsections:—

"Publication" includes any book, paper, newspaper, pamphlet, magazine, periodical, letterpress or printed matter of any kind whatsoever and any writing, print, picture, photograph, lithograph, drawing or representation.

(2) Without prejudice to the generality of the meaning of the word "obscene", any publication or advertisement shall be deemed to be obscene if it unduly emphasises matters of sex, crimes of violence, gross cruelty or horror.

(3)

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(3) In determining for the purposes of this Act whether any publication or advertisement is obscene the court shall have regard to—

- (a) the nature of the publication or advertisement; and
- (b) the persons, classes of persons and age groups to or amongst whom the publication or advertisement was or was intended or likely to be published, distributed, sold, exhibited, given or delivered; and
- (c) the tendency of the publication or advertisement to deprave, corrupt or injure the morals of any such persons, class of persons or age group,

to the intent that a publication or advertisement shall be held to be obscene when it tends or is likely in any manner to deprave, corrupt or injure the morals of any such persons or the persons in any such class or age group, notwithstanding that persons in other classes or age groups may not be similarly affected.

Subst.
sec. 4.

- (b) by omitting section four and by inserting in lieu thereof the following section:—

Exemption
of literary
and artistic
works and
medical
books, &c.

4. The provisions of this Act, other than sections twenty to twenty-nine, both inclusive, do not apply to the printing, publishing, making, possessing, selling, delivery or distribution or the exhibiting in the window of any shop or the posting or causing to be posted of—

- (a) any work of literary or artistic merit;
- or

(b)

- (b) any bona fide medical or scientific book, No. 10, 1955.
pamphlet, magazine or periodical,

unless the court is satisfied that notwithstanding its literary or artistic merit or its character as a medical or scientific book, pamphlet, magazine or periodical, the printing, publishing, making, possessing, selling, delivery or distribution or the exhibiting in the window of any shop or the posting or causing to be posted was not justified in the circumstances of the particular case having regard, in particular, to the persons, class of persons or age groups into whose hands it was intended or likely to come.

- (c) by omitting from subsection two of section ten Sec. 10.
all words following the word "liable" and by (Punish-
ment for
defeating
attach-
ment.)
inserting in lieu thereof the words "if a body
corporate, to a penalty not exceeding five
hundred pounds and, if any other person, to
imprisonment for any term not exceeding three
years.";

- (d) by omitting from section fifteen all words Sec. 15.
following the words "such articles" and by (Offences
by occu-
piers of
premises.)
inserting in lieu thereof the following words:—

"shall be liable—

- (i) if a body corporate, for a first offence to a penalty not exceeding one hundred pounds and for a second or subsequent offence to a penalty not exceeding two hundred pounds; and
- (ii) if any other person, for a first offence to a penalty not exceeding fifty pounds or to imprisonment for any term not exceeding three months and for a second or subsequent offence to a penalty not exceeding one hundred pounds or to imprisonment for any term not exceeding six months.";

(e)

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Sec. 16.

(Printing,
publishing,
&c.,
obscene
publications,
&c.)

- (e) by omitting from section sixteen all words following the words "this Act" and by inserting in lieu thereof the words—

"shall be liable, if a body corporate, to a penalty not exceeding one hundred pounds and, if any other person, to a penalty not exceeding fifty pounds or to imprisonment for any term not exceeding six months.";

New secs.
20—30.

- (f) by inserting next after section nineteen the following headings and new sections:—

*Registration of distributors of printed matter.*Interpreta-
tion.cf. Viet.
Act No.
5779, s. 4.

20. (1) In this section and in sections twenty-one to twenty-nine, both inclusive, of this Act, unless the context or subject-matter otherwise indicates or requires—

"Distributor" means—

- (a) in respect of any printed matter published in New South Wales, the publisher thereof; and
- (b) in respect of any printed matter published outside New South Wales, the person primarily responsible for its distribution or sale in New South Wales.

"Newspaper" means—

- (a) any newspaper; or
- (b) any paper or pamphlet,

containing any public news, intelligence or occurrence, or any remarks or observations thereon or upon any political matter, and published for sale periodically or in parts or numbers at intervals not exceeding twenty-six days between the publication of any two such newspapers or papers or pamphlets or parts or numbers at a price of sixpence or any less amount.

"Printed

“Printed matter” means any book, paper, pamphlet, magazine, periodical, letter-press or printed matter of any kind whatsoever and any writing, print, picture, photograph, lithograph or other reproduction, but does not include—

- (a) any newspaper;
- (b) any printed matter of a purely official, religious, social, professional or scholastic character;
- (c) any printed matter or class of printed matter for the time being exempted by the Governor by regulation.

“Register” means the register referred to in subsection one of section twenty-one of this Act.

(2) The Governor may by regulation, for the purposes of the definition of “Printed matter” in subsection one of this section, exempt any printed matter or class of printed matter specified or described in the regulation and may in like manner from time to time revoke amend or vary any such exemption.

21. (1) The Minister shall cause to be kept a register in the prescribed form of all distributors of printed matter in New South Wales and shall cause all the prescribed particulars with respect to registered distributors of printed matter to be entered therein.

Register of distributors of printed matter and applications for registration.
cf. Viet. Act No. 5779, s. 5

(2) Every distributor of printed matter who is acting as such at the commencement of the Obscene and Indecent Publications (Amendment) Act, 1955, shall, within three months after that commencement, apply in the prescribed manner and form to be registered in the register and upon payment of the prescribed fee he shall be entitled to be so registered.

(3)

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(3) Any person who after the commencement of the Obscene and Indecent Publications (Amendment) Act, 1955, desires to commence business as a distributor of printed matter in New South Wales shall before commencing such business apply in the prescribed manner and form to be registered in the register and upon payment of the prescribed fee he shall, subject to this Act, be entitled to be so registered.

(4) The Minister shall as soon as possible after the expiration of the period of three months after the commencement of the Obscene and Indecent Publications (Amendment) Act, 1955, cause a copy of the register, corrected to the last day of the calendar month then last past, to be printed and published by the Government Printer.

(5) In every subsequent year the Minister shall cause to be printed and published by the Government Printer—

- (a) a copy of the register corrected to the end of the corresponding calendar month; or
- (b) a supplementary list showing all alterations, additions, revisions and removals made in the register during the period of twelve months ending on the last day of the corresponding calendar month—

as the Minister determines.

(6) A copy of the register that is for the time being the latest copy so published shall be read and construed as subject to every supplementary list published after the publication of that copy and every supplementary list so published shall be deemed to be part of that copy.

(7)

(7) A copy of the register purporting to be printed by the Government Printer that is for the time being the latest copy so published shall be evidence in any court or before any person, until the contrary is proved, that every person whose name appears in that copy is registered in the register under this Act and that any person whose name does not appear in that copy is not so registered.

(8) Any certificate purporting to be signed by the Under Secretary of the Chief Secretary's Department and to certify that—

- (a) on a specified day or days or during the whole of a specified period, a particular person was registered under this Act;
- (b) on a specified day or days or during the whole of a specified period, a particular person was not registered under this Act;
- (c) on a specified day the name of a particular person was removed from the register; or
- (d) setting out the particulars contained in the register in connection with any registration,

shall, without proof of the signature or of the official character of the person purporting to have signed the certificate, be prima facie evidence of the matters certified in and by the certificate.

22. After the first publication of the register any distributor of printed matter shall not sell or distribute for sale any printed matter unless he is registered under this Act.

Distributors
to be
registered.
cf. Vict.
Act No.
5779, s. 6.

No. 10, 1955.

Printed
matter to
be marked
with name
and
address of
distributor.
cf. Vict.
Act No.
5779, s. 7.

23. (1) After the first publication of the register any distributor of printed matter shall not sell or distribute for sale any printed matter unless each separate article so sold or distributed is marked in the prescribed manner with the name and address of the distributor thereof.

(2) After the expiration of three months after the first publication of the register any bookseller, newsagent or person shall not sell or exhibit for sale or have in his possession for sale any printed matter unless each separate article thereof is marked in the prescribed manner with the name and address of the distributor thereof.

(3) The Governor may, from time to time by regulation, grant exemptions from compliance with the foregoing provisions of this section in respect of any printed matter or class of printed matter specified or described in the regulation and may, in like manner from time to time, revoke, amend or vary any such exemption.

(4) Where any exemption with respect to any printed matter or class of printed matter is revoked, the provisions of subsection two of this section shall not apply with respect to that printed matter or class of printed matter until the expiration of three months after publication of the revocation in the Gazette.

Cancellation or suspension of registration in certain cases.
cf. *Ibid.*
s. 8.

24. (1) Where any distributor of printed matter is convicted—

- (a) of the indictable offence of publishing an obscene or blasphemous libel; or
- (b) on summary conviction before a court of petty sessions of an offence against any provision of this Act,

the

the court before which he is so convicted, in addition to and without prejudice to the imposition of any other penalty to which he may be liable, may in its discretion by order direct that his registration as a distributor of printed matter be cancelled or that that registration be suspended for such period as the court directs.

(2) After cancellation or during the period of suspension of any registration the distributor in question shall be deemed and taken for all purposes to be unregistered and shall be ineligible to be re-registered unless, upon application made in the prescribed manner to a court of petty sessions after the prescribed notice in writing of intention to make the application has been served upon the Minister, the court directs that the distributor be re-registered.

(3) Upon the expiration of the period for which any registration is suspended the distributor in question, if he has not already been re-registered, shall again be deemed to be registered without further application.

25. Any person aggrieved by any order of a court of petty sessions made under subsection one of section twenty-four of this Act directing cancellation or suspension of a registration may appeal against that order to a court of quarter sessions.

The provisions of Division 4 of Part V of the Justices Act, 1902, as amended by subsequent Acts, apply, mutatis mutandis, to appeals under this subsection from any such order.

26. The fact that any printed matter is marked in the prescribed manner with the name and address of any person as distributor shall in any proceedings for an offence against any provision of this Act be accepted as sufficient evidence that that printed matter was in fact distributed by that person and that he is the distributor thereof unless the contrary is shown.

No. 10, 1955.

Provision
relating
to certain
contracts.
cf. Vict.
Act No.
5779, s. 10.

27. Notwithstanding anything in any contract or agreement, whether entered into before or after the commencement of the Obscene and Indecent Publications (Amendment) Act, 1955, a distributor, bookseller, newsagent or other person shall not be liable for breach of contract by reason only of his rejecting any printed matter delivered to him or of his refusing to accept delivery of or to deal in any printed matter in any case where—

- (a) he bona fide and reasonably believes that his acceptance of delivery of or his possession of or dealing in that printed matter may render him liable for the offence of publishing an obscene or blasphemous libel or for any offence against this Act; and
- (b) he gives to the person from whom he has received or is to receive delivery of that printed matter notice in writing of his rejection thereof or refusal to accept delivery thereof or to deal therein and of the reason therefor as soon as practicable after he becomes aware of the nature of that printed matter.

Penalties.

28. Any person who contravenes or fails to comply with any of the provisions of sections twenty-one, twenty-two or twenty-three of this Act shall be guilty of an offence and shall be liable—

- (a) if a body corporate, for a first offence to a penalty not exceeding one hundred pounds and for a second or subsequent offence to a penalty not exceeding two hundred pounds; and
- (b) if any other person, for a first offence to a penalty not exceeding fifty pounds or to imprisonment for any term not exceeding

exceeding three months and for a second or subsequent offence to a penalty not exceeding one hundred pounds or to imprisonment for any term not exceeding six months. No. 10, 1955.

29. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act. Regulations.

(2) A regulation made under this Act may be of general or specially limited application according to time, place or circumstances, and may be general or restricted to any specified class of persons or printed matter or classes of persons or printed matter other than those specified.

(3) All regulations made under this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session and if not then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, that regulation or part shall thereupon cease to have effect.

Liability

No. 10, 1955.

Liability of
directors,
&c., of
body
corporate.

Liability of directors, &c., of body corporate.

30. Where a body corporate is guilty of an offence against any provision of this Act, any director, manager or officer of the body corporate who knowingly directs, authorises or suffers the commission of the offence by the body corporate shall, without affecting the liability of the body corporate therefor, be severally guilty of the like offence and liable to the penalty or imprisonment provided by this Act in the case of such an offence by a person other than a body corporate.
