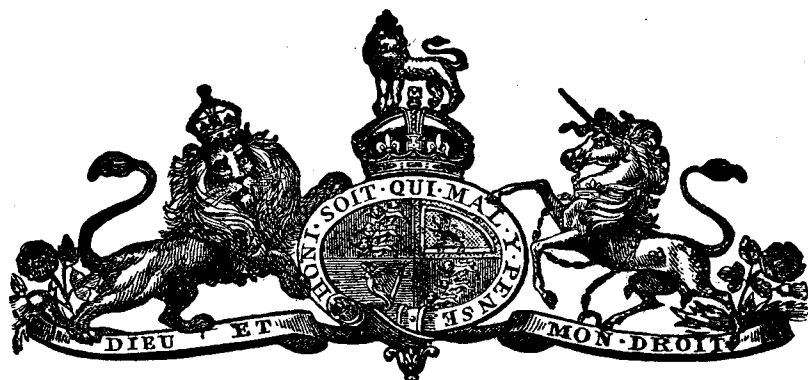


TASMANIA.



1917.

ANNO OCTAVO

GEORGII V. REGIS.

No. 11.

ANALYSIS.

- | | |
|---|---|
| <ul style="list-style-type: none"> 1. Short title. 2. Repeal. 3. Interpretation. 4. Offences. 5. Persons deemed guilty of offence in connection with newspaper being an indecent document. 6. Considerations determining whether or not document is indecent. 7. Documents relating to certain subjects deemed indecent. 8. Servant and employer, and agent and principal, each guilty of offence committed by one of them. | <ul style="list-style-type: none"> 9. Absence of guilty knowledge no defence. 10. Evidence of printing, publishing, or sale of document by defendant. 11. On complaint on oath, magistrate or justices may issue search-warrant for indecent documents. 12. Summary procedure. 13. No prosecution to be commenced without leave of Attorney-General. |
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AN ACT to consolidate and amend the Law prohibiting the Publication or Sale of Indecent Literature, and for other purposes. [30 October, 1917.]

A.D. 1917.

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

1 This Act may be cited as "The Indecent Publications Act, 1917." Short title.

6d.]

Indecent Publications.

A.D. 1917.

Repeal

Interpretation.

2 The Acts mentioned in Schedule (1) to this Act are hereby repealed.

3 In this Act, unless a different intention appears—

“Indecent document” means any book, newspaper, picture, photograph, print, or writing, and any paper or other thing of any description whatsoever, which has printed or impressed upon it or otherwise attached thereto, or appearing, shown, or exhibited in any manner whatsoever thereon, any word, statement, or significant sign of an indecent nature or suggesting indecency, or any picture, illustration, or representation of an indecent nature or suggesting indecency :

“Newspaper” means any newspaper registered under “The Printers and Newspapers Act, 1911,” or any periodical publication which is published for the time being (whether in this State or elsewhere) at intervals not exceeding Three months, or any copy of or part of any copy of any newspaper as so defined ; and every document which at any time accompanies and is distributed along with any newspaper shall be deemed to form part of the newspaper :

5 Ed. VII. No.
30.

“Public place” has the same inclusions as the expression “public place” has by virtue of Section Four of “The Police Act, 1905.”

Offences.

4 Every person commits an offence against this Act, and is liable on conviction in a summary way, to a fine not exceeding Fifty Pounds, or, when the offence is wilfully committed, to a fine not exceeding One hundred Pounds or to imprisonment for Three months, who—

i Sells, or delivers by way of hire, or offers for sale or hire, or has in his possession for sale or hire, an indecent document knowing or having reasonable means of knowing that such document is indecent : or

ii. Prints or causes to be printed an indecent document : or

iii. Causes to be inserted in a newspaper any matter or thing whereby that newspaper becomes an indecent document :
or

iv. Sends or causes to be sent, or attempts to send, through the post an indecent document : or

v. Exhibits or causes to be exhibited an indecent document to any person in consideration or expectation of any payment, or otherwise for gain, and whether such payment is made by way of gratuity or otherwise howsoever : or

vi. Publicly exhibits or causes to be publicly exhibited an indecent document in a public place, or so that the same is in view of persons in a public place : or

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- vii. Delivers or offers, or causes to be delivered or offered, an indecent document to any person in a public place knowing or having reasonable means of knowing that such document is indecent : or
- viii. Delivers or leaves, or causes to be delivered or left, on premises in the occupation of any other person an indecent document, knowing or having reasonable means of knowing that such document is indecent : or
- ix. Writes, draws, affixes, impresses, or exhibits or causes to be written, drawn, affixed, impressed, or exhibited, any statement, word, picture, drawing, or sign of an indecent nature or suggesting indecency, in or upon a public place, or so that the same is in view of persons in a public place : or
- x. Delivers to any person an indecent document with intent that it should be so dealt with by that or any other person in such a manner as to constitute an offence against this section.

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5 If any newspaper printed, or published, or sold, or offered for sale, or kept for the purpose of sale in this State contains any matter or thing whereby it becomes an indecent document, every person who at the date of the publication of that newspaper is or acts as a printer, publisher, proprietor, manager, editor, or sub-editor thereof, and every person who consented to the insertion therein of that matter or thing, shall, without excluding the liability of any other person, be conclusively deemed to have caused that matter or thing to be inserted in the newspaper, and shall be severally guilty of an offence against Section Four of this Act accordingly.

Persons deemed guilty of offence in connection with newspaper being an indecent document.

6 In determining whether any document or other matter is of an indecent nature or suggests indecency within the meaning of this Act, the magistrate shall take into consideration not merely the nature of that document or matter itself, but also the nature and circumstances of the act done by the defendant with respect thereto, and the purpose with which the act was done, and the literary, scientific, or artistic merit or importance of the document or matter ; and no document or matter shall be held to be indecent unless, having regard to these and all other relevant considerations, the magistrate is of opinion that the act of the defendant was of an immoral or mischievous tendency.

Considerations determining whether or not document is indecent.

7 Subject to the provisions of the last preceding section, any document or matter which relates or refers, or may be reasonably supposed to relate or refer, to any disease affecting the generative organs of either sex, or to any complaint or infirmity arising from or relating to sexual intercourse, or to the prevention or removal of irregularities in menstruation, or to drugs, medicines, appliances, treatment, or methods for procuring abortion or miscarriage or preventing conception, shall be deemed to be indecent within the meaning of this Act.

Documents relating to certain subjects deemed indecent.

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Servant and employer, and agent and principal, each guilty of offence committed by one of them.

8 When an indecent document is sold, or delivered by way of hire, or offered for sale or hire, by a servant or agent in the course of his employment or agency, whether with or without the authority of his employer or principal, the document shall, for the purposes of this Act, be conclusively deemed to have been so sold, delivered, or offered, as the case may be, both by the servant or agent and by his employer or principal, and each of those persons shall be severally guilty of an offence against Section Four of this Act accordingly.

Absence of guilty knowledge no defence.

9 Except as is otherwise provided in paragraphs One, Seven and Eight of Section Four of this Act, it shall be no defence in a prosecution for any offence against this Act that the defendant had no knowledge that the document, matter, or thing to which the prosecution relates was of an indecent nature.

Evidence of printing, publishing, or sale of document by defendant.

10 When, in the case of any prosecution for an offence against this Act, the indecent document which is the subject of the prosecution contains a statement that the document was printed, published, or sold by the defendant, the statement may be received as sufficient evidence of the fact so stated unless the contrary is proved.

On complaint on oath, magistrate or justices may issue search-warrant for indecent documents.

11—(1) On the complaint on oath of any constable that he has reason to believe and does believe (stating the grounds of his belief) that any indecent documents are kept in any place for the purpose of being so dealt with as to constitute an offence against this Act, a police magistrate or any Two justices may give authority, by warrant in the form set forth in Schedule (2) hereto or to the like effect, to any constable to enter into or upon that place, with such assistance as may be necessary, whether by day or night, and if necessary to use force by breaking open doors or otherwise, and to search for and seize all such indecent documents as aforesaid.

(2) All the articles so seized shall be brought before a police magistrate, who shall thereupon issue a summons calling upon the occupier of the place so entered to appear before him to show cause why the articles seized should not be destroyed.

(3) If, on the hearing of the summons, the magistrate is satisfied that any of the articles so seized are of the character stated in the warrant, and have been kept for the purpose aforesaid, he may order that those articles (except such of them as he considers necessary to be preserved as evidence in any further proceedings) be destroyed at the expiration of Fourteen days from the making of the order, and the articles shall in the meantime be impounded.

(4) If the magistrate is satisfied that any articles so seized are not of the character stated in the warrant, or have not been kept for the purpose aforesaid, he shall forthwith direct them to be restored to the occupier of the place in which they were seized.

(5) No action shall lie against any person for any act done in good faith in pursuance or intended pursuance of this section or of any warrant or order issued or made in pursuance or intended pursuance thereof.

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12—(1) All informations for offences against the provisions of this Act, and all penalties and fines imposed by or made payable under the provisions of this Act, may be heard, determined, recovered, and enforced in a summary way by and before a police magistrate. A.D. 1917.

Summary
procedure.

(2) Subject to the provisions of this Act, the proceedings on such informations, and all proceedings under this Act, before a police magistrate, shall be regulated by "The Magistrates Summary Procedure Act" and any amendments thereof, or any other Act for the time being in force regulating summary proceedings before justices.

13 No prosecution for an offence against this Act shall be commenced except with the leave of the Attorney-General.

No prosecution to
be commenced
without leave of
Attorney-
General.
Schedule.

SCHEDULES.

(1)

Number of Act.	Short Title.	Extent of Repeal.
44 Vict. No. 25, 1 November, 1880	"The Obscene Publications Act, 1880"	The whole Act
64 Vict. No. 26, 20 November, 1900	"The Indecent Publications Act, 1900"	The whole Act

(2)

TASMANIA.

To W.T., Constable, and to all other constables of

WHEREAS C.D., a police constable, has made complaint on oath before me, E.H. Esquire, a police magistrate [*or before us, the undersigned, Two of His Majesty's justices of the peace*] that he has reason to believe (stating the grounds of his belief) that certain indecent documents (to wit) are kept in the shop [*or dwelling-house, or as the case may be*] in the occupation of A.B. [*occupation and address*], situated at , for the purpose of being so dealt with as to constitute an offence against "The Indecent Publications Act, 1917."

This is therefore to authorise and require you forthwith, with necessary and proper assistance, to enter, whether by day or night, into the said shop [*or other premises, as the case may be*] and there diligently to search for the said documents, and if on such search the same or any one or more of them are found, that you bring the documents or document so found before a police magistrate to be disposed of according to law.

Given under my hand, at , this day of , 19 .

E.H.

