

POLICE OFFENCES (OFFENSIVE PUBLICATIONS) BILL.

EXPLANATORY MEMORANDUM.

The Bill is designed to substantially amend the provisions of Division 1A of the *Police Offences Act* 1958. The principal proposals are concerned with—

1. A change in the function of the State Advisory Board on Publications constituted by section 180C of Division 1A of the Police Offences Act. It is envisaged that the Board, the name of which will be changed to the State Classification of Publications Board, will undertake, *inter alia*, the role of classification of publications as unsuitable for persons under the age of 18 years. This role is at present undertaken by the Minister acting on the advice of the State Advisory Board on Publications.
2. The introduction of procedures to ensure that publications are submitted for the consideration of the State Classification of Publications Board.
3. Inclusion of reference to drugs of addiction in the criteria upon which publications may be classified as restricted and, therefore, as unsuitable for persons under the age of 18 years.
4. Extension of the conditions applied to publications classified as restricted—
 - (a) to provide that such publications shall not be displayed in any place to which persons under the age of 18 years have access or so as to be visible from any such place ; and
 - (b) to prevent the advertising of restricted publications.
5. A requirement for the marking of publications classified as restricted to indicate the fact of restriction and the conditions applicable to such restriction.
6. Provision for review by the State Classification of Publications Board of its decisions not to classify publications as restricted or to classify publications as restricted.
7. Inclusion of power for the Minister to take specific action against persons engaged in the distribution, sale or delivery of publications coming within the ambit of Division 1A in circumstances where such persons—
 - (a) do not submit the publications for the consideration of the State Classification of Publications Board ; or
 - (b) do not regularly submit all such publications.

Notes on Clauses.

Clause 1 sets out the short title of the Bill and provides for the *Police Offences Act* 1958 to be referred to as the Principal Act. It also provides for proclamation by the Governor in Council of the date of commencement.

Clause 2 amends section 180B of the Principal Act in *re* the definition of " Board " to replace the title " State Advisory Board on Publications " with the title " State Classification of Publications Board ". A definition of " drug of addiction " is included in section 180B. Such drug is defined to mean any substance or preparation specified in Schedule Eight to the *Poisons Act* 1962 or added thereto by proclamation. The clause provides, also, for amendments of section 180C (1) and section 180G of the Principal Act consequent upon the change in the title of the State Advisory Board on Publications to the State Classification of Publications Board. It preserves the identity and actions of the Board upon its change in title and preserves, also, the terms of office of its members.

Clause 3 substitutes sections 180D, 180DA and 180E for sections 180D and 180E of Division 1A of the Principal Act. A summary of the re-enacted provisions is as follows:—

New Section 180D

Sub-section (1) enables the Minister, a member of the police force or an inspector appointed for the purposes of Division 1A to refer any publication to the State Classification of Publications Board for consideration for classification as a restricted publication.

Sub-section (2) provides that the State Classification of Publications Board may, of its own motion, and shall, when a publication is referred to it, consider a publication for classification as a restricted publication.

Sub-section (3) enables any person to make application to the Minister to refer a publication to the State Classification of Publications Board for consideration for classification as a restricted publication.

New Section 180DA

Sub-section (1) states that the State Classification of Publications Board shall report to the Minister on any matter arising out of the administration of Division 1A which he may refer to it and on any matter which the Board considers should be brought to the Minister's notice.

Sub-section (2) provides that any member or members of the Board may make a report to the Minister when in disagreement with a report made to the Minister by the Board.

New Section 180E

Sub-section (1) permits a member of the police force or an inspector appointed for the purposes of Division 1A to enter and inspect premises used for a business of distributing, selling, delivering, displaying or exhibiting publications at any time when such premises are open for business; to inspect and examine any publication found on the premises; and to take possession of any publication which, on reasonable grounds, the member or inspector believes that the State Classification of Publications Board would classify as a restricted publication.

Sub-section (2) requires that, within 48 hours of the taking of possession of a publication in terms of sub-section (1), it shall be forwarded to the State Classification of Publications Board for consideration pursuant to the provisions of section 180H of Division 1A.

Clause 4 substitutes sections 180H, 180I, 180J, 180JA, 180K, 180M, 180MA and 180MB for sections 180H, 180I, 180J, 180K, 180L and 180M of Division 1A of the Principal Act. The following is a summary of the re-enacted provisions:—

New Section 180H

Sub-section (1) provides that the State Classification of Publications Board shall classify a publication as restricted where it is of the opinion that the publication is unsuitable for persons under the age of 18 years because of the nature or extent of reference therein to sex, drugs of addiction, drug addiction, crime, violence, gross cruelty, or horror or its disgusting or indecent language or illustration.

Sub-section (2) retains an existing provision of Division 1A whereby the Board may form an opinion that a publication is unsuitable for persons under the age of 18 years because of the indecent or offensive nature of its cover.

Sub-section (3) indicates that a reference in sub-section (1) of section 180H to "drug of addiction" or "drug addiction" includes a reference to the excessive or undue emphasis on the use of drugs in a manner contrary to the best interests of the community.

Sub-section (4) enables the State Classification of Publications Board, for the purpose of determining whether a publication is unsuitable for persons under the age of 18 years, to have regard to the decisions, determinations or directions of authorities of the Commonwealth, or of a State or Territory, having similar functions to those of the Board and to adopt or refer to any decision, determination or direction of any such authority.

New Section 180i

Sub-section (1) provides for the detailed restrictions to be applied to a publication classified by the State Classification of Publications Board as restricted. These are that—

- (a) the publication shall not be offered for sale, sold, delivered, exhibited or displayed to any person under the age of 18 years ;
- (b) the publication shall not be made available for inspection or perusal by any person under the age of 18 years ;
- (c) the publication shall not be exhibited or displayed in any place to which persons under the age of 18 years have access or so that it is visible from any such place ; and
- (d) the publication shall not be advertised in any manner whatsoever.

Sub-section (2) creates an offence of contravention of the detailed restrictions applying to a publication classified as restricted and provides, for a first offence, a penalty of not more than \$1,000 or imprisonment for a term of not more than six months and, for a second or subsequent offence, a penalty of not more than \$2,000 or imprisonment for a term of not more than two years.

Sub-section (3) prescribes that the provisions of the new section 180i do not apply to the exhibition or display of a restricted publication to a person under the age of 18 years by a parent or legal guardian of that person.

Sub-section (4) provides that it is an offence for a person to permit an employé under the age of 18 years to have access to a restricted publication or to cause or permit any such employé to sell or deliver a restricted publication.

A penalty of not more than \$500 or imprisonment for a term of not more than three months is provided for a first offence whilst a second or subsequent offence attracts a penalty of not more than \$1,000 or imprisonment for a term of not more than one year.

New Section 180j

Sub-section (1) requires that a publication classified by the State Classification of Publications Board as a restricted publication shall be marked in a prescribed manner indicating—

- (a) that the publication is a restricted publication ; and
- (b) each of the restrictions referred to in the new section 180i (1).

Sub-section (2) creates an offence in respect of a person who sells, delivers, exhibits or displays a restricted publication which is not marked as required by sub-section (1). A first offence carries a penalty of not more than \$500 or imprisonment for not more than three months whilst a penalty of not more than \$1,000 or imprisonment for not more than one year is prescribed for a second or subsequent offence.

New Section 180jA

Sub-section (1) enables a person to make application in writing to the Minister requesting that—

- (a) a publication that has been considered by the State Classification of Publications Board for classification as a restricted publication, but which has not been so classified, shall be referred to the Board for review of its determination ; or
- (b) the classification of a publication as a restricted publication be revoked.

Sub-section (2) provides that the State Classification of Publications Board may, when an application pursuant to sub-section (1) is referred to it, or of its own motion—

- (a) review its determination not to classify a publication as a restricted publication ; or
- (b) revoke a classification of a publication as a restricted publication.

Sub-section (3) extends the provisions of section 180JA to the periodicals and issues of periodicals classified as restricted publications under the new section 180L.

New Section 180K

Sub-section (1) requires that notice of any determination of the State Classification of Publications Board to classify a publication as a restricted publication and of the revocation of the classification of a publication as a restricted publication shall be published in the *Government Gazette*.

Sub-section (2) provides that the determination of the State Classification of Publications Board to classify a publication as a restricted publication or to revoke such a classification is effective on the day following the day on which notice of such classification or revocation is published in the *Government Gazette*.

Sub-section (3) requires that, where notice pursuant to section 180K has been published in the *Government Gazette*, a person who—

(a) sells or delivers a restricted publication to another person ; and

(b) has cause to believe that the publication will be sold or delivered by that other person for the purpose of gain—

shall notify that other person in writing of any determination or decision made by the State Classification of Publications Board in respect of the publication.

Sub-section (4) creates an offence, with a penalty of \$500, in respect of any person who fails to comply with the requirements of sub-section (3).

New Section 180M

Sub-section (1) provides that where an offence under Division 1A is committed by a person on any premises used for a business of distributing, selling, delivering, displaying or exhibiting publications, the occupier of the premises and the person in charge of the business shall each be guilty of a like offence.

Sub-section (2) stipulates that it is a defence to a prosecution of a person under sub-section (1) if the person proves that—

(a) the offence was committed without his knowledge or consent ; and

(b) that he took all such steps as were reasonable in the circumstances to prevent an offence against Division 1A being committed.

Sub-section (3) provides that a body corporate may be guilty of any offence against Division 1A and, for the purposes of the Division, there shall be imputed to a body corporate any knowledge, consent, intent, fraud, wilfulness or falseness of any director, member or officer of the body corporate. Any person who is such a director, member or officer that is guilty of an offence against Division 1A shall be deemed to have committed the offence and (without affecting the liability of the body corporate or of any other person for the offence) shall be liable accordingly (unless he proves that the act or omission constituting the offence took place without his consent, and that he did not know and could not reasonably have known of the offence).

New Section 180MA

Sub-section (1) enables the Minister to declare as a specified distributor a person who, in the opinion of the Minister, is regularly engaged in the distribution, sale or delivery of publications which are unsuitable for persons under the age of 18 years, where the Minister is satisfied that such person—

(a) does not regularly submit such publications to the State Classification of Publications Board for classification ; or

(b) where that person does so submit publications but does not regularly do so.

Sub-section (2) provides that the Minister may revoke a declaration made under sub-section (1).

Sub-section (3) provides that a specified distributor shall not distribute, sell, deliver or advertise any publication unless—

(a) that publication has been submitted to the State Classification of Publications Board for classification pursuant to the new section 180H (1) ; and

(i) the Board has determined not to classify it as a restricted publication ; or

(ii) the Board has classified it as a restricted publication and the distribution, sale and delivery is in accordance with the applicable restrictions under the new section 180I ;

(b) that publication is in relation to that distributor a declared publication under sub-section (4).

Sub-section (4) enables the State Classification of Publications Board to declare a publication or a publication included in a class of publications to be a declared publication in relation to a specified distributor.

Sub-section (5) permits the State Classification of Publications Board to revoke a declaration under sub-section (4).

New Section 180MB

The section provides that, subject to the *Public Service Act* 1974, there shall be appointed such inspectors as are required for the purposes of Division 1A.