

Obscene and Indecent Publications.

Act No. 12, 1901.

An Act to consolidate the Acts relating to the prevention and suppression of obscene and indecent publications. [4th October, 1901.]

OBSCENE AND
INDECENT
PUBLICATIONS.

BE it enacted by the King'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:—

Repeal and interpretation.

1. This Act may be cited as the "Obscene and Indecent Publications Act 1901." Short title.

2. The Acts mentioned in the Schedule to this Act are hereby repealed.

3. In this Act unless the context or subject-matter otherwise indicates or requires—

"Justice" means justice of the peace.

"Obscene publication" includes any obscene book paper newspaper or printed matter of any kind whatsoever and any obscene writing print picture photograph lithograph drawing or representation. 34 Vic. No. 24, s. 1.

"Indecent" advertisement or picture or printed or written matter includes any advertisement picture or printed or written matter relating to any complaint or infirmity arising from or relating to sexual intercourse or to nervous debility or female irregularities or which might reasonably be construed as relating to any illegal medical treatment or illegal operation. No. 2, 1900, s. 4.
No. 27, 1900, s. 1.

Application of Act.

4. Nothing in this Act relates to the printing publishing making possessing selling or delivery or the exhibiting in the window of any shop or the posting or causing to be posted for transmission by post for any lawful purpose of any bona-fide medical work or treatise. But in any prosecution for an offence against this Act the burden of proof that a publication is a bona-fide medical work or treatise shall lie on the defendant. Bona-fide medical works protected.
No. 2, 1900, s. 5.

Seizure of obscene publications, &c.

5. A police magistrate or any two justices may subject to the conditions in the next section contained authorise by special warrant any constable or police officer to enter in the daytime into any house shop Power to issue special warrant to enter premises and search for and seize obscene publications.
43 Vic. No. 24, s. 1.

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shop room or other place and to search for and seize all obscene publications found therein together with all printing presses engines types plates stones working plant and material used for the purposes of or in any way in connection therewith and to carry all the articles so seized which are capable of removal before a police magistrate or any two justices.

Conditions precedent to issue of special warrant.
43 Vic. No. 24, s. 1.

6. No special warrant shall be issued unless—
- (a) a complaint is made on oath and
 - (b) the complainant states in his complaint that he has reason to believe and does believe that obscene publications are for the purpose of gain kept in some house shop room premises or place for sale distribution exhibition lending upon hire or being otherwise published and
 - (c) the complainant also states on oath that one or more articles of the like character have been sold distributed exhibited lent or otherwise published for the purpose of gain at or in connection with such place so as to satisfy the police magistrate or justices that the belief of the complainant is well founded and
 - (d) it is proved to the satisfaction of the police magistrate or justices that any of the articles so kept are of such a character and description that their publication would be a misdemeanour or an offence under this Act and proper to be prosecuted as such.

Constable may break open doors.
Ibid.

7. The constable or police officer to whom any such special warrant is issued may if necessary obtain assistance and use force by breaking open doors or otherwise in order to effect an entry.

Destruction and forfeiture of articles seized under a special warrant.

Summons to occupier of premises to attend and show cause.
Ibid.

8. Whenever any articles are seized and brought before a police magistrate or justices in pursuance of a special warrant he or they shall immediately issue a summons calling upon the occupier of the house or other place entered by virtue of such warrant to appear within seven days before such police magistrate or any two justices assembled in petty sessions to show cause why the articles seized should not be destroyed and such of them as are of the nature of working plant and material forfeited.

Destruction and forfeiture of articles seized.
Ibid.

9. (1) The police magistrate or justices shall—
- (a) if the occupier or some other person claiming to be the owner of the articles seized does not appear within the time limited or
 - (b) if the occupier or such other person appears and it is found that the articles seized or any of them are of the character stated in the warrant and have been kept for any of the purposes mentioned in section six

order

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order the articles seized except such as he or they consider necessary to be preserved as evidence in further proceedings to be destroyed or forfeited at the expiration of the time allowed for lodging an appeal.

(2) The articles seized shall be impounded or attached until the expiration of the time allowed for appealing or where an appeal is lodged until the decision of the appeal.

Impounding and attachment.
43 Vic. No. 24, s. 1.

(3) The police magistrate or justices shall if satisfied that the articles seized are not of the character stated in the warrant or have not been kept for any of the purposes mentioned in section six direct them to be restored to the occupier of the house or other place in which they were seized and if under attachment to be released therefrom.

Restoration of articles seized.
Ibid.

Attachment.

10. (1) Working plant or material seized under the authority of this Act may be attached by the constable or police officer executing a special warrant in the manner following:—

Attachment of working plant &c.
Ibid. s. 3.

The constable or police officer shall—

- (a) make an inventory and copy inventory of the working plant and material and
- (b) write at the foot of such copy a notice that the working plant and material specified in such copy have been attached under this Act and
- (c) give the copy inventory endorsed with such notice to the person in or apparently in possession of the working plant and material.

(2) Any person who with intent to defeat an attachment and knowing such working plant or material to have been attached disposes of removes retains embezzles conceals or receives such working plant or material or any part thereof shall be guilty of a misdemeanour and on conviction be liable to imprisonment with or without hard labour for a term not exceeding three years.

Punishment for defeating attachment.

11. (1) All attachments shall be reported forthwith by the constable or police officer making them to the police magistrate or one of the justices who issued the special warrant.

Attachments to be reported.
Ibid. s. 4.

(2) Such police magistrate or justice shall take measures and give directions for the safe custody of the working plant and materials attached.

12. The constable or police officer attaching any such working plant or material may secure the same on the premises where they are found by sealing up without causing unnecessary hindrance or inconvenience any repository room or closet or by leaving some person on the premises in custody of them.

Constable may seal up articles seized.
Ibid. s. 5.

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Release from attachment.
43 Vic. No. 24, s. 6.

13. Working plant or material may be released from attachment by an order under the hand of the police magistrate or justices who issued the special warrant under which the seizure was made or by an order of the Court of Quarter Sessions in case of an appeal.

Seizure and destruction of articles hawked in streets.

Seizure of obscene publications hawked for sale &c.
Ibid. s. 7.

14. (1) Any police officer above the rank of an ordinary constable may forthwith seize and carry to the nearest police office any obscene publication found hawked about or carried in any street or public place for sale or for exhibition distribution or publication for gain and shall report the fact of such seizure in writing to the magistrate there presiding.

Destruction of publication seized.
Ibid.

(2) Such magistrate may—

- (a) if within seven days after such seizure the person who hawked about or carried the publications seized or some person claiming to be their owner does not appear and demand possession or
- (b) if such person appears and demands possession and it is found that the publications are obscene and were hawked about or carried for any of the purposes aforesaid

order such books to be destroyed as provided in section nine.

Restoration of publications.
Ibid.

(3) The magistrate shall if not satisfied that the publications are obscene or were hawked about or carried for any of the aforesaid purposes order them to be forthwith restored to the claimant.

Offences.

15. Every—

By occupiers of premises.
Ibid. s. 2.

(a) occupier of the house shop room premises or place wherein any articles of the character described in section five have been seized or attached and

By owners of articles.
Ibid.

(b) owner and person who in the opinion of the police magistrate or justices adjudicating appears to be the owner of such articles

shall for a first offence be liable to a penalty not exceeding twenty pounds or in the discretion of the Court to imprisonment for a term not exceeding three months and for a second or subsequent offence to a penalty not exceeding fifty pounds or in the discretion of the Court to imprisonment for a term not exceeding six months.

Printing or publishing of obscene publications.
Ibid.
No. 2, 1900, s. 1.

16. Whosoever—

Publishing indecent advertisements or reports in newspaper.

- (a) prints photographs lithographs draws makes sells publishes distributes or exhibits any obscene publication or assists in so doing or
- (b) publishes a newspaper containing any indecent or obscene advertisement or report or

(c)

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- (e) gives or delivers to any other person any indecent or obscene picture or printed or written matter with the intent that the same or a copy thereof or any part of such matter or a copy thereof should be published as an advertisement in any newspaper or Delivering such advertisements for publication in newspaper.
 - (d) affixes to or inscribes on any house building wall hoarding gate fence pillar board tree or any other thing whatsoever so as to be visible to a person being in or passing along any street public highway or footpath or affixes to or inscribes on any public urinal or delivers or attempts to deliver or exhibits to any person or throws down the area of any house or into the garden or curtilage of any house or exhibits to public view in the window of any house or shop or otherwise publishes any indecent or obscene picture or printed or written matter or Affixing indecent or obscene pictures or writings.
 - (e) gives or delivers to any other person any such pictures or printed or written matter with the intent that the same or some one or more thereof or a copy of any such picture or printed or written matter should be affixed inscribed delivered exhibited or otherwise published in contravention of the provisions of this section or Sending others to do acts punishable under this section.
 - (f) posts or causes to be posted for transmission by post any indecent or obscene picture or printed or written matter or Posting indecent pictures and printed matter.
 - (g) prints any picture or printed matter published or posted in contravention of this Act Printing indecent pictures or printed matter. Penalty.
- shall be liable to a penalty not exceeding twenty pounds or in the discretion of the Court to imprisonment for a term not exceeding six months with or without hard labour.

Actions against justices and others.

17. No action suit or other proceeding shall be brought against any person for anything done or omitted to be done in pursuance of this Act or in the execution of the authorities conferred thereunder unless— Limitation of actions. 43 Vic. No. 24, s. 9.

- (a) notice in writing is given by the party intending to prosecute such action suit or proceeding to the intended defendant one month at least before prosecuting the same and
- (b) the action suit or proceeding is brought or commenced within three months next after the act or omission complained of or if the damage is continuous then within three months next after the doing of such damage has ceased.

18. (1) No plaintiff shall recover in an action suit or other proceeding for an irregularity trespass or other wrongful proceeding committed in the execution of this Act or under any authority thereby Plaintiff to recover nothing if defendant tenders amends before action brought. Ibid. s. 8.

Vagrancy.

thereby given if before action or suit brought sufficient amends have been tendered by or on behalf of the party who committed the irregularity trespass or other wrongful proceeding.

Payment into Court.

43 Vic. No. 24, s. 8.

(2) In case no tender has been made the defendant may by leave of the Court in which the action suit or proceeding is pending pay into Court at any time before issue joined such sum of money as he thinks fit and all proceedings orders and adjudications shall be had and made by the Court as in other actions where defendants are allowed to pay money into Court.

Schedule.

SCHEDULE.

Number of Act.	Title or short title.	Extent of repeal.
43 Vic. No. 24 ..	The Obscene Publications Prevention Act, 1880.	The whole Act.
No. 2, 1900 ...	The Indecent Publications Act, 1900... ..	The whole Act, except section 3.
No. 27, 1900 ...	An Act to amend the Indecent Publications Act, 1900.	The whole Act.