

Act No. 12, 1908.

An Act to prevent soliciting for the purpose of prostitution; to regulate the keeping of opium; to amend the Prisons Act, 1899, the Police Offences Act, 1901, the Obscene and Indecent Publications Act, 1901, the Poisons Act, 1902, the Vagrancy Act, 1902, the Vagrancy (Amendment) Act, 1905, the Justices Act, 1902, and the Gaming and Betting Act, 1906; and for other purposes incidental thereto. [5th December, 1908.]

POLICE OFFENCES  
(AMENDMENT).  
—

**B**E 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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Police Offences (Amendment) Act, 1908," and is divided into Parts, as follows:—

PART I.—PRELIMINARY—ss. 1-2.

PART II.—VAGRANCY ACTS—ss. 3-7.

PART

*Police Offences (Amendment).*PART III.—POLICE OFFENCES ACT, 1901—*ss.* 8–15.PART IV.—PRISONS ACT, 1899—*s.* 16.PART V.—OBSCENE AND INDECENT PUBLICATIONS ACT, 1901—*s.* 17.PART VI.—OPIUM—*ss.* 18–20.PART VII.—GAMING AND BETTING ACT, 1906—*s.* 21.PART VIII.—JUSTICES ACT, 1902—*ss.* 22–23.

Repeal.

2. The Acts mentioned in the Schedule are, to the extent therein expressed, hereby repealed.

## PART II.

## VAGRANCY ACTS, 1902, AND 1905.

Extension of the meaning of "aboriginal."

Amendment of *s.* 4, subs. 2, of the Vagrancy Act, 1902. Certain persons to be deemed rogues and vagabonds. cf. South Aust. Act, 1899, No. 715, *s.* 4, and Vict. Act, No. 1241, *s.* 13.

3. Section three of the Vagrancy Act, 1902, is amended by the addition to the definition of "aboriginal" in that section of the words "or of any other State of the Commonwealth of Australia."

4. Section four, subsection two, of the same Act, is hereby amended by the addition of the following paragraphs—

(*l*) in or near any public place or place of public resort, or in or near any house or premises licensed under the Liquor Act, 1898, or the Billiards and Bagatelle Act, 1902, or any Acts amending the same, engages in playing or betting, or solicits or encourages any other person to play or bet—

(*i*) at or with any table or instrument of gaming at any game or pretended game of chance; or

(*ii*) at or on any game or trick of sleight of hand; or

(*iii*) at or on any game or trick played with any instrument which in the opinion of the adjudicating justice is constructed or used as a means of cheating;

(*m*) being a known or reputed cheat, loiters in or near any public place or place of public resort, or in or near any premises licensed under the Liquor Act, 1898, or the Billiards and Bagatelle Act, 1902, or any Acts amending the same, and has in his possession any instrument of gaming, or any instrument which in the opinion of the adjudicating justice, is constructed or used as a means of cheating, unless such person accounts for his having such instrument in his possession, to the satisfaction of the adjudicating justice;

(*n*) pretends or professes to tell fortunes, or uses any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose on any person;

(o)

Fortune telling. 5 Geo. IV, c. 83, *s.* 4.

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(o) being a male person—

- (i) knowingly lives wholly or in part on the earnings of prostitution; or
- (ii) in any public place solicits or importunes for immoral purposes.

Persons trading upon prostitution. South Australian Act of 1899, No. 715, s. 10.

For the purpose of paragraph (o), where a male person is proved to live with or to be habitually in the company of a prostitute, and has no visible means of subsistence, he shall, unless he satisfies the adjudicating justice to the contrary, be deemed to be knowingly living on the earnings of prostitution.

Proof. South Australian Act of 1899, No. 715, s. 12.

5. The same section is further amended,—

- (1) by the addition of the words “or by common prostitutes” at the end of paragraph (e) of subsection one; and
- (2) by the addition of the following paragraph after paragraph (h) of subsection one:—
  - (i) Being a common prostitute, solicits or importunes for immoral purposes, any person who is in any public street, thoroughfare, or place.
- (3) by the addition of the following words at the end of subsection one:—

Further amendment of s. 4, of the Vagrancy Act, 1902.

Provided that when a female is arrested for any offence included under paragraph (i) of this subsection, the convicting justice may—

- (i) commit the female to be detained for any period not exceeding twelve months in an institution established by the Governor as a reformatory for the purposes of this Act; or
- (ii) impose imprisonment as aforesaid; or
- (iii) by his sentence impose either of the above penalties, and suspend the execution of such sentence upon such terms and conditions as he may think fit, which he shall embody in his recorded decision of the case for transmission to the Minister.

If any female whose sentence has been so suspended fails to observe any of such terms and conditions she may be arrested by any officer of police and brought before any justice, and on proof of such failure on her part being given to his satisfaction such justice may direct that the original sentence be put into force, and may give all orders and grant such warrants as may be necessary for such enforcement.

- (4) by the omission of the word “frequents” and the substitution therefor of the words “is found in or on” in paragraph (j) of subsection two.

6.

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6. The following sections are inserted next after section eight:—

Insulting behaviour,  
&c.  
Vict. Act. 1891, No.  
1241, s. 7.

8A. Every person who, in or near any public street, thoroughfare, or place, or within the view or hearing of any person passing therein—

(a) behaves in a riotous, indecent, offensive, threatening, or insulting manner; or

(b) uses any threatening, abusive, or insulting words,

shall be liable on conviction to a penalty not exceeding five pounds, and may, in addition thereto or in substitution therefor, be required by the adjudicating justice to enter into a recognizance, with or without sureties, to be of good behaviour for a term not exceeding twelve months, and, in default of its being entered into forthwith, the defendant may be imprisoned for any period not exceeding six months, unless such recognizance is sooner entered into.

Penalty on owner,  
occupier, or agent of  
house for permitting  
prostitution therein.  
29 Vic., c. 35, s. 36.

8B. If any person, being the owner, occupier, or agent of any house, room, or place, or being a manager or assistant in the management thereof, induces or suffers any female whom he knows to be a common prostitute to be in that house, room, or place for the purpose of prostitution, he shall be liable to a penalty not exceeding twenty pounds, or, in the discretion of the justices, to be imprisoned for any term not exceeding six months.

Owner may evict  
occupier of house.

If any owner of a house, room, or other place has reasonable grounds to suspect that the same is used in contravention of this section, he may serve on the occupier a notice to quit.

The serving of such notice shall determine as from the seventh day after the date of such service any tenancy under which the occupier may hold, whether as tenant or subtenant, as if the same had expired by effluxion of time. The owner may thereupon, without any authority other than this Act, take legal proceedings to evict, and may evict, such occupier.

Such notice shall be served personally on the occupier, but if he cannot be found service may be effected by posting a copy of the notice on some conspicuous part of the said house, room, or place.

Any such notice to quit may be cancelled by the court before whom the proceedings are heard, subject to such terms as it thinks fit, on the hearing, on proof that the occupier has not at any time allowed the house, room, or place to be used in contravention of this section.

No conviction under this section shall exempt the offender from any penalty or other punishment to which he may be liable for keeping or being concerned in keeping a brothel or disorderly house, or for the nuisance thereby occasioned.

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8c. Where any person is accused of being an idle or disorderly person on the ground that he has no visible lawful means of support, or that he has insufficient lawful means of support, proof that he possesses money or property shall not be a defence unless it is also proved by the defendant that such money or property was obtained by him honestly and in a bona fide manner.

Persons charged with being idle and disorderly, having money in their possession.

South Aust. Act, 1899, No. 715, s. 3, and Vict. Act, No. 1241, of 1891, s. 11.

7. (1) Section two of the Vagrancy (Amendment) Act, 1905, is amended by omitting the word "and" after the word "fan-tan" and inserting after the word "pak-a-pu" the words "and two-up," and by inserting after the word "chance" the words "or the disposal of money by lottery or chance."

Amendment of s. 2 of Vagrancy (Amendment) Act, 1905. Unlawful games.

(2) Section three of the same Act is amended by inserting after the word "game" the words "or in any such disposal of money by lottery or chance."

PART III.

POLICE OFFENCES ACT, 1901.

8. (1) Section six is amended by the omission of the words "one pound" and the substitution in lieu thereof of the words "two pounds"

Amendment of section 6.

(2) Section seven is amended by the omission of the words "two pounds" and the substitution in lieu thereof of the words "three pounds"

Amendment of section 7.

9. The following section is inserted next after section eight:—

8A. Whosoever carries in any street or public place or sells any detonator stick, explosive stick, or metal contrivance whereby detonators or explosive matter of any description may be exploded, shall be liable to a penalty not exceeding two pounds.

Selling detonators.

10. Section nine is amended by inserting after the word "makes" in the sentence "makes any bonfire" the words "or assists in making."

Amendment of section 9.

11. The following section shall be read as and in place of section twenty seven:—

Persons unlawfully in possession of property.

27. Whosoever being charged before a justice with—

cf. Police Offences Act, 1901, s. 27.

- (a) having anything in his custody; or
- (b) knowingly having anything in the custody of another person;
- or
- (c) knowingly having anything in a house, building, lodging, apartment, field, or other place, whether belonging to or occupied by himself or not, or whether such thing is there had, or placed for his own use or the use of another,

which

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which thing may be reasonably suspected of being stolen or unlawfully obtained, does not give an account to the satisfaction of such justice how he came by the same, shall be liable to a penalty not exceeding ten pounds or to imprisonment for a term not exceeding three months.

Amendment of  
section 28 of the  
Police Offences Act,  
1901.

**12.** (1) Section twenty-eight is amended by omitting the word "dwelling" where it occurs in that section, and inserting after the word "house" each time it occurs the words "building, lodging, apartment, field."

(2) The same section is amended by omitting the words "any chief constable or inspector of police," and inserting in lieu thereof the words "any constable"; and by omitting the words "such chief constable or inspector" where they occur in the section, and substituting in lieu thereof the words "such constable."

Amendment of  
section 29 of the  
same Act.

(3) Section twenty-nine is amended by omitting the words "having or conveying anything stolen or unlawfully obtained," and inserting in lieu thereof the words "an offence under section twenty-seven"; and by omitting the words "the same" where first occurring, and inserting "anything the subject of such charge."

Amendment of  
section 32.

**13.** Section thirty-two is amended by the addition of the following subsection next after subsection three:—

(3A) In such further order the justice may, in his discretion, order that if the person against whom such order is made does not forfeit or pay to the party aggrieved the amount of the value so determined, he shall be imprisoned in accordance with the provisions of section eighty-two of the Justices Act, 1902; but if the justice does not so order, then the aforesaid further order shall, together with any order for costs made against the defendant, operate as an order for the payment of money under the Small Debts Recovery Act, 1899, and any Act amending the same, and be enforceable as such order under the provisions of the said last-mentioned Acts. Such order for such purpose may be entered in the records of the small debts court exercising jurisdiction at the petty sessions where such order was made in such manner as may be prescribed by rules made under the last-mentioned Acts.

Amendment of  
section 58.

- 14.** (1) Section fifty-eight subsection one is amended by—
- (a) omitting the words "petty misdemeanour" and substituting therefor the words "offence punishable on summary conviction by a fine or penalty not exceeding ten pounds"; and
  - (b) omitting the words "said city or towns" and inserting in lieu thereof the word "state"; and
  - (c) inserting at the end of the subsection the following proviso:  
Provided that such recognizance shall be good and have effect according to the terms thereof, notwithstanding the fact that, on subsequent investigation, it appears that the said person would, under the said charge, be liable to a penalty exceeding ten pounds. (2)

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(2) Subsection four of the same section is amended by omitting the words "or within one hour thereafter"

15. Section one hundred and one is amended by inserting next after subsection one the following subsection:—

(1A) A police magistrate or any two justices may, at the request of his employer, or of the council of a municipality or shire, and subject to the approval of the Inspector-General of Police, in like manner nominate and appoint any person employed as a caretaker, night watchman, or in any similar capacity, as a special constable for such time as such magistrate or justices may think fit.

The provisions of this Part relating to special constables who have been called out shall apply to all special constables appointed under this subsection from the time when such constables have taken the oath as in the next subsection provided.

The Inspector-General of Police may, whenever he thinks fit, suspend or determine the services of any such special constable. Notice of such suspension or determination of service shall be forthwith sent by the Inspector-General of Police to the Colonial Secretary.

## PART IV.

## PRISONS ACT, 1899.

16. Section thirty-seven of the Prisons Act, 1899, is amended—
- (a) by the insertion after the word "hard" in subsection one of the words "or light" and after the word "he" of the words "or any other justice"; and
  - (b) by the addition of the following subsection to be read after subsection one:—

(2) Any offender who refuses to obey an order given by any officer of the police force, attached to such watch-house or lock-up, in pursuance of such direction, or who is guilty of idleness or negligence in obeying such order, or in his work, may be brought before any justice at such watch-house or lock-up, and, on conviction of such refusal, idleness, or negligence, be liable to the punishment mentioned in subsection two of section fourteen.

## PART V.

## OBSCENE AND INDECENT PUBLICATIONS ACT, 1901.

Amendment of  
section 16.

17. Section sixteen of the Obscene and Indecent Publications Act, 1901, is amended by the insertion after the word "sells" in paragraph (a) of the words "or has in his possession apparently for the purpose of sale."

## PART VI.

## OPIMUM.

Definition.

18. For the purposes of this Part, "opium" includes any preparation thereof in a form capable of being used for the purposes of smoking.

Prohibition of  
possession of opium.

19. (1) No person shall—

(a) unless the holder of a certificate to deal in poisons, issued under the provisions of the Poisons Act, 1902, or any Act amending the same, sell, or have in his possession, opium ;

Opium smoking.

(b) smoke opium ;

Keeping place for  
opium smoking.

(c) keep open, manage, or assist in keeping open or managing, any house, room, or place used for the purpose of opium smoking ;

(d) being the owner or lessee of any house, room, or place, knowingly permit such house, room, or place to be used for the purpose of opium smoking.

Penalty.

Any person contravening the provisions of this section shall be liable on conviction to a penalty not exceeding fifty pounds.

Exemptions.

Such penalty may be recovered before a stipendiary or police magistrate or any two justices of the peace.

(2) Nothing in this section shall apply to the possession or sale of—

(a) opium when made up or compounded as a medicine by a medical practitioner or according to the prescription of a medical practitioner ;

(b) opium in the form of homœopathic medicine, unless in the crude state, mother tincture, or of a greater strength than the third potency ;

(c) patent medicines ;

(d) medicines dispensed by veterinary surgeons for animals under their treatment ;

(e) fly poison papers and packets of poisonous mixtures for the destruction of vermin, when marked as such.



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20. (1) If any constable has reasonable cause to suspect that there is in any house or place opium, in contravention of this Act, or that opium is being smoked therein, he may, with the authority in writing of a magistrate or a superintendent of police, enter such house or place and make search. Constables may enter, search, and arrest.

If opium is found in any such house or place, or in the possession of any person, the constable may demand the production of the said certificate from the owner or occupier of such house or place, or from the person in whose possession the opium is found, and if such certificate is not produced, may forthwith seize the opium, and arrest any person present who he has reasonable grounds to suspect is contravening the provisions of the last preceding section and take him before a stipendiary or police magistrate, or any two justices of the peace, and there charge him with such offence.

(2) The opium so seized shall be forfeited and disposed of as the adjudicating magistrate or justices may direct.

(3) Any person resisting or aiding or abetting in the resistance to any constable in the execution of his duty under this section shall be liable to a penalty not exceeding fifty pounds.

PART VII.

GAMING AND BETTING ACT, 1906.

21. Subsection (a) of section three of the Gaming and Betting Act, 1906, is amended by inserting after the word "playing" the words "or taking part in"; and by inserting after the word "therein" the words "or for giving or selling any ticket or chance, or share in a ticket or chance, for the disposal of money by lottery or chance, or for aiding or taking part in the disposal of money by lottery or chance." Amendment of s. 3 of Gaming and Betting Act, 1906.

PART VIII.

JUSTICES ACT, 1902.

22. Section eighty-two is amended as follows:—

- (a) In subsection one, by the insertion after the words "In no case" of the words "except where the conviction or order is made against a corporate body." Amendment of s. 82. Remedies against corporate bodies.
- (b) In subsection two, by the insertion after the words "Justices making the conviction or order shall" of the words "except where the conviction or order is made against a corporate body."

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(c)

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(c) By the insertion of the following subsection after subsection two :—

Whenever any corporate body is, by any conviction or order, adjudged to pay any fine, penalty, sum of money, or costs, such conviction or order shall operate as an order for the payment of money under the Small Debts Recovery Act, 1899, and any Act amending the same, and be enforceable as such order under the provisions of the said Acts. For such purpose such conviction or order may be entered in the records of the small debts court exercising jurisdiction at the petty sessions where such order or conviction was made in such manner as may be prescribed by rules made under the said Acts.

Amendment of s. 13  
of Justices Act,  
1902.

**23.** Section thirteen of the Justices Act, 1902, is amended by the addition of the following proviso :—

Provided further, that nothing in this Part of this Act shall abridge or prejudice the powers of any justice, authorised by the Governor for that purpose in the Government Gazette, to hear and determine offences under sections six and seven of the Police Offences Act, 1901.

## SCHEDULE.

Reference to Act.	Short title.	Extent of repeal.
1 Edw. VII, No. 5...	Police Offences Act, 1901 ... ..	Sections 27, 110, 111, and 112.
2 Edw. VII, No. 74...	Vagrancy Act, 1902... ..	Section 4, subs. 1 (c) and 2 (f); section 8.