

**OBSCENE AND INDECENT PUBLICATIONS (AMEND-
MENT) ACT.**

New South Wales



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 54, 1967.

An Act to make further provisions for the prevention and suppression of obscene and indecent publications; to establish a State Advisory Committee on Publications; for these and other purposes to amend the Obscene and Indecent Publications Act 1901, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 21st November, 1967.]

BE

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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 :—

Short title,
citation
and com-
mencement.

1. (1) This Act may be cited as the "Obscene and Indecent Publications (Amendment) Act, 1967".

(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, 1901–1967.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment
of Act No.
12, 1901.

2. The Obscene and Indecent Publications Act, 1901–1965, is amended—

Sec. 3.
(Interpreta-
tion.)

(a) by inserting in subsection one of section three immediately before the definition of "Justice" the following new definitions :—

"Board" means the National Literature Board of Review, constituted under the Customs (Prohibited Imports) Regulations made under the Customs Act 1901 of the Parliament of the Commonwealth of Australia and any Act passed in amendment of or substitution for that Act.

"Committee" means the State Advisory Committee on Publications constituted under this Act.

(b)

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- (b) (i) by inserting in section four after the word "inclusive," the words "and sections thirty-four to thirty-seven, both inclusive,"; No. 54, 1967
Sec. 4.
(Exemption of literary and artistic works and medical books, &c.)
- (ii) by omitting from the same section the words "the court is satisfied" and by inserting in lieu thereof the words "it is proved by the prosecution".

3. The Obscene and Indecent Publications Act, 1901— Further amendment of Act No. 12, 1901.
 1965, is further amended—

- (a) by omitting from section five the words "police magistrate" wherever occurring and by inserting in lieu thereof the words "stipendiary magistrate"; Sec. 5.
(Power to issue special warrant to enter premises and search for and seize obscene publications.)
- (b) by omitting from section six the word "police" wherever occurring and by inserting in lieu thereof the word "stipendiary"; Sec. 6.
(Conditions precedent to issue of special warrant.)
- (c) by omitting from section eight the word "police" wherever occurring and by inserting in lieu thereof the word "stipendiary"; Sec. 8.
(Summons to occupier of premises to attend and show cause.)
- (d) by omitting from section nine the word "police" wherever occurring and by inserting in lieu thereof the word "stipendiary"; Sec. 9.
(Destruction and forfeiture of articles seized.)
- (e) by omitting from section eleven the words "police magistrate" wherever occurring and by inserting in lieu thereof the words "stipendiary magistrate"; Sec. 11.
(Attachments to be reported.)

(f)

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- Sec. 13.
(Release from attachment.)
- Sec. 14.
(Seizure of obscene publications hawked for sale, &c.)
- Sec. 15.
(Offences.)
- Further amendment of Act No. 12, 1901.
- Sec. 15.
(Offences.)
- Sec. 16.
(Printing or publishing obscene publications.)
- (f) by omitting from section thirteen the word "police" and by inserting in lieu thereof the word "stipendiary";
- (g) (i) by omitting from subsection one of section fourteen the words "the magistrate there presiding" and by inserting in lieu thereof the words "a stipendiary magistrate or any two justices";
- (ii) by inserting in subsections two and three of the same section after the word "magistrate" wherever occurring the words "or justices";
- (h) by omitting from paragraph (b) of section fifteen the word "police" and by inserting in lieu thereof the word "stipendiary".
- 4. The Obscene and Indecent Publications Act, 1901-1965, is further amended—**
- (a) (i) by omitting from paragraph (i) of section fifteen the words "two hundred dollars" and "four hundred dollars" and by inserting in lieu thereof the words "five hundred dollars" and "one thousand dollars" respectively;
- (ii) by omitting from paragraph (ii) of the same section the words "one hundred dollars" and "two hundred dollars" and by inserting in lieu thereof the words "two hundred and fifty dollars" and "five hundred dollars" respectively;
- (iii) by omitting from the same paragraph the words "three months" and "six months" and by inserting in lieu thereof the words "six months" and "twelve months" respectively;
- (b) by omitting from section sixteen the words "shall be liable, if a body corporate, to a penalty not exceeding two hundred dollars and, if any other person, to a penalty not exceeding one hundred dollars

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dollars or to imprisonment for any term not exceeding six months” and by inserting in lieu thereof the words—

“shall, upon conviction on indictment, be liable—

- (i) if a body corporate, for a first offence to a penalty not exceeding five hundred dollars and for a second or subsequent offence to a penalty not exceeding one thousand dollars; and
 - (ii) if any other person, for a first offence to a penalty not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding six months, and for a second or subsequent offence to a penalty not exceeding five hundred dollars or to imprisonment for a term not exceeding twelve months”;
- (c) by omitting from subsection two of section nineteen the words “on summary conviction, to imprisonment for a term not exceeding four months, or to a fine not exceeding one thousand dollars, or to both such imprisonment and fine” and by inserting in lieu thereof the words “upon conviction on indictment—
- Sec. 19.
(Restriction of publication of reports of judicial proceedings.)
- (a) if a body corporate, to a penalty not exceeding four thousand dollars; and
 - (b) if any other person, to a penalty not exceeding two thousand dollars or to imprisonment for a term not exceeding twelve months”;
- (d) by omitting from the definition of “Newspaper” in subsection one of section twenty the words “five cents” and by inserting in lieu thereof the words “ten cents”;
- Sec. 20.
(Interpretation.)

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Sec. 24.
(Cancellation or suspension of registration in certain cases.)

(e) by omitting from paragraph (b) of subsection one of section twenty-four the words "on summary conviction before a court of petty sessions";

Sec. 28.
(Penalties.)

(f) (i) by omitting from paragraph (a) of section twenty-eight the words "two hundred dollars" and "four hundred dollars" and by inserting in lieu thereof the words "five hundred dollars" and "one thousand dollars" respectively;

(ii) by omitting from paragraph (b) of the same section the words "one hundred dollars" and "two hundred dollars" and by inserting in lieu thereof the words "two hundred and fifty dollars" and "five hundred dollars" respectively;

(iii) by omitting from the same paragraph the words "three months" and "six months" and by inserting in lieu thereof the words "six months" and "twelve months" respectively.

Further amendment of Act No. 12, 1901. New secs. 31-38.

5. The Obscene and Indecent Publications Act, 1901-1965, is further amended by inserting next after section thirty the following short headings and new sections :—

State Advisory Committee on Publications.

State Advisory Committee on Publications.

31. (1) There shall be constituted a State Advisory Committee on Publications, which shall have and may exercise and discharge the powers, authorities, duties and functions conferred and imposed on the Committee by this Act.

(2) The Committee shall consist of not less than three nor more than seven persons appointed by the Governor.

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(3) (a) A person who is of or above the age of sixty-five years shall not be appointed as a member of the Committee. No. 54, 1967

(b) Any member of the Committee shall be deemed to have vacated his office on the day upon which he attains the age of sixty-five years.

(4) The chairman and deputy chairman of the Committee shall be the persons respectively appointed as such by the Governor from among the members of the Committee.

(5) Of the members so appointed—

- (a) one shall be a woman;
- (b) one shall be a recognised expert in literature, art or science; and
- (c) one shall be a barrister or solicitor.

(6) Subject to this section the members shall hold office for a term of five years but shall be eligible for re-appointment.

(7) A member shall be deemed to have vacated his office if he—

- (a) dies;
- (b) becomes bankrupt, compounds with his creditors or makes any assignment of his salary or estate for their benefit;
- (c) becomes a mentally ill person or a protected person or an incapable person within the meaning of the Mental Health Act, 1958, as amended by subsequent Acts;
- (d) resigns his office by writing under his hand addressed to the Governor;
- (e) is removed from office by the Governor.

(8) On the occurrence of a vacancy in the office of a member, the Governor may appoint a person to the vacant office and where the member whose office is vacant

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vacant held the qualifications specified in paragraph (a), (b) or (c) of subsection five of this section the person so appointed shall have the qualifications specified in paragraph (a), (b) or (c) as the case may require. The person so appointed shall, subject to this section, hold office for the remainder of his predecessor's term of office.

(9) Each member shall be entitled to receive such remuneration for his services and travelling expenses at such rate as may be fixed from time to time by the Governor.

(10) Meetings of the Committee shall be held from time to time on the requisition of the chairman or the Minister.

(11) A majority of members shall constitute a quorum for the purposes of any meeting of the Committee, and any duly convened meeting at which a quorum is present shall be capable of exercising and performing any of the powers, authorities, duties and functions conferred and imposed upon the Committee by or under this Act.

(12) At any meeting of the Committee at which a quorum is present the decision of the majority of the members present and voting shall be the decision of the Committee.

If at any meeting of the Committee the voting on any matter is equal, the chairman shall have a second or casting vote.

(13) In the absence of the chairman the deputy chairman shall exercise the powers, authorities, duties and functions conferred and imposed on the chairman by this Act.

(14) The provisions of the Public Service Act, 1902, or any Act amending or replacing the same, shall not apply to or in respect of the appointment by the
Governor

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Governor of any member of the Committee, and any member so appointed shall not, in his capacity as such member, be subject to the provisions of any such Act during his term of office. No. 54, 1967

(15) The office of a member of the Committee shall not for the purposes of the Constitution Act, 1902, or any Act amending or replacing that Act, be deemed to be an office of profit under the Crown.

32. (1) The Minister may refer any publication or class of publication to the Committee for consideration of the publication or class of publication with the object of reporting to the Minister whether or not in the opinion of the Committee the publication or class of publication— Powers and functions of Committee.

- (a) has any literary or artistic merit, or
- (b) has a bona fide medical or scientific value,
- (c) by reason of the nature or extent of references therein to sex, drug addiction, crimes of violence, gross cruelty or horror or its tendency to deprave, corrupt or injure the morals of any persons, class of persons or age groups, is undesirable reading for children under the age of sixteen years and should be classified as a restricted publication or class of publication,
- (d) should be the subject of proceedings under section sixteen of this Act.

(2) The Minister may refer to the Committee any other matter arising out of the administration of this Act for its report thereon.

(3) The Committee shall include in its report to the Minister the reasons for and matters taken into consideration in formulating its decision and each member of the Committee may make an individual report on the publication or class of publication or matter referred to the Committee.

Restricted

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*Restricted Publications.*Restricted
publications.

33. (1) Where the Committee has made a report to the Minister for the purposes of paragraph (c) of subsection one of section thirty-two of this Act the Minister, upon consideration of that report, may determine that a publication or class of publication shall be classified as a restricted publication or class of publication.

The classification of a publication or class of publication as a restricted publication or class of publication shall, if the Minister so determines, extend not only to the publication or class of publication specified in the determination but to all subsequent editions, series, numbers or issues of that publication or class of publication, notwithstanding any reconstruction (whether by way of alteration in title, change of subject, characters, story or other features or otherwise howsoever) of such publication or class and any such subsequent editions, series, numbers or issues shall for the purposes of this Act be a restricted publication or class of publication.

(2) A determination made by the Minister pursuant to subsection one of this section may be varied or revoked by the Minister.

(3) Notification of any such determination or any variation or revocation of any such determination shall be published in the Gazette and the determination or any variation or revocation thereof shall not take effect until so notified.

Offences in
relation to
restricted
publications.

34. (1) Whosoever in any street or public place (not being a shop)—

- (a) sells any restricted publication or any publication within a restricted class of publication;
 - (b) has any restricted publication or any publication within a restricted class of publication in his possession apparently for the purpose of selling it in a street or public place (not being a shop);
- or

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- (c) publishes, distributes or exhibits any restricted publication or any publication within a restricted class of publication, No. 54, 1967

shall be guilty of an offence against this section.

(2) Whosoever—

- (a) exhibits to public view in the window or doorway of any shop any restricted publication or publication within a restricted class of publication; or
- (b) in any street or public place (including a shop) advertises, or publishes, distributes or exhibits any advertising material in such a manner as to inform any person—
- (i) that a publication is a restricted publication or within a restricted class of publication; or
- (ii) that an identifiable place or person may be resorted to for the purpose of perusing or obtaining a publication referred to in that advertisement or advertising material in such a manner as to convey that it is a restricted publication or a publication within a restricted class of publication,

shall be guilty of an offence against this section, unless the advertising, publication, distribution or exhibition is bona fide for the purpose of so informing only persons, or the servants or agents of persons, whose business is or includes the sale or distribution of publications.

(3) Any person guilty of an offence against this section shall, upon summary conviction, be liable—

- (a) if a body corporate, for a first offence to a penalty not exceeding two hundred and fifty dollars and for a second or subsequent offence to a penalty not exceeding five hundred dollars;

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- (b) if any other person, for a first offence to a penalty not exceeding one hundred and twenty-five dollars or to imprisonment for a term not exceeding three months, and for a second or subsequent offence to a penalty not exceeding two hundred and fifty dollars or to imprisonment for a term not exceeding six months.

(4) Where a person has been convicted of an offence against this section or where in respect of any person an offence against this section has been found proved, there shall be forfeited to the use of Her Majesty—

- (a) in the case of an offence referred to in subsection one of this section, all restricted publications or publications within a restricted class of publication found, at the time of the commission of the offence, in the possession or apparently under the control of that person ;
- (b) in the case of an offence referred to in paragraph (a) of subsection two of this section, all restricted publications or publications within a restricted class of publication found, at the time of the commission of the offence, in the window or doorway of the shop in respect of which the offence was committed ; or
- (c) in the case of an offence referred to in paragraph (b) of subsection two of this section, all advertising material of the nature referred to in that paragraph found, at the time of the commission of the offence, in the possession or apparently under the control of that person.

Certain publications not to form subject of prosecution.

Certain
publications
not to be
liable to
prosecution.

35. (1) The Minister, upon the recommendation of the Committee, may determine that any book, magazine or periodical proposed to be published, sold or distributed shall not be the subject of proceedings under section five or sixteen of this Act.

(2)

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(2) A determination made by the Minister pursuant to subsection one of this section may be revoked by the Minister. No. 54, 1967

(3) Notification of any such determination or the revocation of any such determination shall be published in the Gazette and the determination or any revocation thereof shall not take effect until so notified.

(4) Subject to subsection five of this section but notwithstanding anything otherwise contained in this Act, no proceedings shall be instituted under section five or sixteen of this Act in respect of any book, magazine or periodical to which a determination under this section relates.

(5) Where a determination under this section is revoked, subsection four of this section shall, without affecting its previous operation, cease to apply to or in respect of the book, magazine or periodical to which the revoked determination related.

Proceedings not to be instituted without approval of Minister.

36. (1) Subject to this section, proceedings under the provisions of this Act in respect of any book, magazine or periodical shall not be instituted without the approval of the Minister. Approval of Minister required to institution of proceedings.

(2) Subsection one of this section shall not apply to or in respect of proceedings under section thirty-four of this Act.

Indictable offences punishable summarily.

37. (1) Where a person is charged before a stipendiary magistrate or two justices with any indictable offence under this Act, and the evidence for the prosecution is, in the opinion of such magistrate or justices, sufficient Accused to have option of summary disposal of case.

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sufficient to put the accused on his trial, but it appears to him or them that the case may properly be disposed of summarily, and if the accused consents to it being so disposed of, and does not desire to have the case determined by a jury, the said magistrate or justices shall have jurisdiction to hear and determine the charge in a summary manner, and pass sentence upon the person so charged.

The provisions of sections four hundred and seventy-nine, four hundred and eighty and four hundred and eighty-one of the Crimes Act, 1900, as amended by subsequent Acts, shall apply, *mutatis mutandis*, to and in respect of a charge determined in a summary manner under this section.

(2) A person convicted summarily under subsection one of this section—

(a) of an offence against section sixteen of this Act shall be liable—

(i) if a body corporate, for a first offence to a penalty not exceeding two hundred and fifty dollars and for a second or subsequent offence to a penalty not exceeding five hundred dollars; and

(ii) if any other person, for a first offence to a penalty not exceeding one hundred and twenty-five dollars or to imprisonment for a term not exceeding three months and for a second or subsequent offence to a penalty not exceeding two hundred and fifty dollars or to a term of imprisonment not exceeding six months; or

(b) of an offence against section nineteen of this Act shall be liable—

(i) if a body corporate, to a penalty not exceeding two thousand dollars; and

(ii)

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- (ii) if any other person, to a penalty not exceeding one thousand dollars or to a term of imprisonment not exceeding six months.

Protection of persons acting under this Act.

38. No proceedings, whether at law or in equity, shall lie or be made or allowed by or in favour of any person against the Board or the Committee or any member of the Board or the Committee or any other person whomsoever acting under the direction of the Board or the Committee in respect of any act done or omitted to be done bona fide in the execution of any power or authority conferred on the Committee by this Act or on the Board.

Proceedings
not to lie
against
persons
acting bona
fide under
and for
the purposes
of the
powers of
the Board or
Committee