

*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

I. P. K. VIDLER,  
*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,  
Sydney, 28 March, 1973.*

## New South Wales



ANNO VICESIMO SECUNDO

**ELIZABETHÆ II REGINÆ**

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**Act No.       , 1973.**

An Act to require books, magazines, periodicals and certain other articles to conform to certain standards of decency; to restrict the circulation and display of certain books, magazines and periodicals; to prohibit certain advertisements; to repeal the Obscene and Indecent Publications Act 1901; and for purposes connected therewith.

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*Indecent and Restricted Publications.*

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**B**E 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  
5 follows :—

1. This Act may be cited as the "Indecent and Restricted Short title.  
Publications Act, 1973".

2. The Acts specified in the Schedule are, to the extent Repeals.  
so specified, hereby repealed.

10 3. This Act is divided, as follows :—

Division of  
Act.

PART I.—PRELIMINARY—*ss.* 1–4.

PART II.—INDECENT ARTICLES—*ss.* 5–10.

PART III.—RESTRICTED PUBLICATIONS—*ss.* 11–17.

PART IV.—GENERAL—*ss.* 18–25.

15 SCHEDULE.

4. (1) In this Act, except to the extent that the context Interpretation.  
or subject-matter otherwise indicates or requires—

"article" includes any thing—

- 20 (a) that contains or embodies matter to be read  
or looked at, or both;
- (b) that is to be looked at;
- (c) that is a record ; or
- 25 (d) that may be used, either alone or as one of a  
set, for the production or manufacture there-  
from of any thing referred to in paragraph  
(a), (b) or (c) ;

"Board"



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5 “Board” means the National Literature Board of Review constituted under the Customs (National Literature Board of Review) Regulations made under the Customs Act 1901 of the Parliament of the Commonwealth and includes any successor to that Board and any person or body of persons performing, in relation to the administration of this Act, the like functions;

10 “Committee” means the State Advisory Committee on Publications constituted under this Act;

“justice” means justice of the peace;

“premises” includes any structure, building, vehicle or vessel, or any part thereof, and any place whether built on or not, or any part thereof;

15 “publish” includes—

- (a) distribute, disseminate, circulate, deliver, send, exhibit, lend, sell, offer for sale, let on hire and offer to let on hire;
- 20 (b) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a);
- 25 (c) print, photograph or make in any other manner (whether of the same or of a different kind or nature) for the purpose of doing an act so referred to or to enable such an act to be done.

30 “record” means a gramophone record or a wire or tape, or a film, and any other thing of the same or of a different kind or nature, on which is recorded a sound or picture and from which, with the aid of suitable apparatus, the sound or picture may be produced, whether or not it is in a distorted or altered form.



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(2) For the purposes of this Act, but without prejudice to the generality of the word "indecent", an article is indecent—

- 5 (a) if it describes, depicts, expresses or otherwise deals with; or
- (b) where it is a record, if it may be used to produce a sound or picture that describes, depicts, expresses or otherwise deals with,

10 matters relating to sex, drug addiction, horror, crime, cruelty or violence in a manner, or to an extent, that departs from contemporary community standards of decency, regard being had to the nature of the article, any merit it may have in the field of literature, art, medicine or science and, where it is published, to the circumstances of its publication.

15 (3) For the purposes of this Act, but without prejudice to the generality of the definition of "publish" in subsection (1)—

- 20 (a) a person publishes a positive or negative photograph if he uses it, or makes it available for use, to make a positive or negative picture in a form visible by reflected or transmitted light;
- (b) a person publishes a record if he causes the sound or picture recorded thereon to be produced, whether or not it is produced in a distorted or altered form.

25 (4) A film that would, but for this subsection, be an indecent article is not an indecent article if it is registered, or exempted from registration, by or under the Theatres and Public Halls Act, 1908.

(5)



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(5) For the purposes of this Act an article may be indecent notwithstanding that part of the article is not indecent.

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PART II.

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INDECENT ARTICLES.

5. (1) A person contravenes this section if he publishes, or causes to be published, or assists in publishing, an indecent article. Offence relating to publication of indecent article.

(2) The court that hears and determines the matter of an information for a contravention of this section may, if it finds the charge proved (whether or not a conviction is recorded) order that the article to which the information relates and, where the article was seized pursuant to a special warrant issued under section 6 (1), any other article seized pursuant to the warrant, be forfeited to Her Majesty.

Penalty : In the case of a corporation—\$1,000 for a first offence and \$2,000 for a second or subsequent offence. In any other case—\$500 or imprisonment for six months for a first offence and \$1,000 or imprisonment for twelve months for a second or subsequent offence.

6. (1) Where a complaint is made on oath to a stipendiary magistrate or two justices to the effect that the complainant has reason to suspect, and believes—

25 (a) that an article that may reasonably be suspected of being an indecent article is kept in or on specified premises for the purpose of being published; or

(b)

Special warrant to search for and seize indecent articles.



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(b) that such an article has been published in, on  
or from specified premises,

the magistrate or justices may, if satisfied that the belief of  
the complainant is well founded, authorise by special warrant  
5 any member of the police force to enter those premises, to  
search for and seize any articles found therein or thereon that  
may reasonably be suspected of being indecent articles and  
to produce by means of any suitable apparatus (whether found  
on the premises or not) a sound or picture from any record  
10 found in or on the premises.

(2) In the execution of a special warrant issued under  
subsection (1), a member of the police force may take with  
him such assistants as he thinks necessary and may, by  
breaking down doors or otherwise, use, or authorise his  
15 assistants to use, force in gaining the entry authorised by the  
special warrant.

7. (1) Where an article has been seized pursuant to a  
special warrant issued under section 6 (1), it shall be returned  
to the premises in or on which it was seized unless, not later  
20 than one month after the seizure, an information is laid  
against a person for a contravention of section 5 with respect  
to the article (or an article of which it is a copy) or a  
member of the police force reports the seizure to a justice  
who shall thereupon issue his summons calling on the person  
25 who, at the time of the seizure of the article, was occupying  
or using the premises entered by virtue of the warrant to  
appear before a court of petty sessions constituted by a  
stipendiary magistrate to show cause why the article and  
any other article seized pursuant to the warrant should not  
30 be forfeited to Her Majesty.

Summons to  
show cause  
against  
forfeiture  
of article  
may issue.

(2)



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(2) Where a summons issues under subsection (1) with respect to any articles, the court before which it is returned may order that there be forfeited to Her Majesty—

- 5 (a) such of the articles as are not claimed by the person summoned, or by some other person; or
- (b) where the person summoned, or some other person, claims any of the articles—such of the articles claimed as are found by the court to be indecent.

10 **8.** (1) A member of the police force may seize any article that is in a public place if it may reasonably be suspected of being an indecent article.

Suspected  
indecent  
article in  
public  
place.

15 (2) A member of the police force who seizes an article under subsection (1) shall take it to a police station and shall, unless he brings a person before a stipendiary magistrate charged with a contravention of section 5 with respect to the article, report the seizure in writing to a court of petty sessions.

20 (3) Where any article is seized under subsection (1), a court of petty sessions constituted by a stipendiary magistrate may, unless the article has been forfeited pursuant to section 5 (2), order that the article be forfeited to Her Majesty if—

- 25 (a) within the period of six months that next succeeds the seizure of the article no person applies to take possession of the article; or
- (b) a person applies within that period to take possession of the article and the court finds that the article is indecent.



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5 **9.** Where an article is seized pursuant to a special warrant issued under section 6 (1) or pursuant to section 8 (1), a court of petty sessions shall order the return of the article to the person who appears to be lawfully entitled to possession thereof if the court finds that the article, or an article of which it is a copy, is not indecent—

Return of seized article.

- 10 (a) at the hearing and determination of an information for a contravention of section 5 with respect to the article; or
- (b) where the article has not been forfeited pursuant to section 5 (2)—
- 15 (i) on the return of a summons issued pursuant to section 7 (1); or
- (ii) on an application referred to in section 8 (3) (b).

20 **10.** (1) This section applies to a business an object of which is the sale or disposal of any article, material, compound, preparation, device or other thing (whether of the same or of a different kind or nature) that is primarily concerned with, or is used or intended to be used in connection with, sexual behaviour but is not printed matter.

Offences relating to certain type of business.

25 (2) A person other than a corporation contravenes this section if he carries on or manages a business to which this section applies and he advertises, or attempts to advertise, or counsels or procures a person to advertise, in any manner the nature of the object of his business referred to in subsection (1).

(3) A corporation contravenes this section if—

30 (a) it carries on or manages a business to which this section applies; and

(b) the corporation, or a director, secretary or employee of the corporation, advertises, or attempts to advertise, or counsels or procures a person to advertise, in any manner the nature of the object of its business referred to in subsection (1).

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(4)



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5 (4) For the purposes of subsections (2) and (3), it is not an advertisement of the nature of an object of a business to which this section applies to make the object known only to a person, or the servant or agent of a person, who carries on a business or undertaking, or practises a profession, that ordinarily involves selling or disposing of, or advising on or prescribing the use of, any article, material, compound, preparation or device referred to in subsection (1).

10 (5) A person contravenes this section if, in or in connection with the carrying on of a business to which this section applies, he exhibits or displays in a manner visible from a public place, or visible to a person who has not consented to or requested the exhibition or display, any article,  
15 material, compound, preparation, device or other thing referred to in subsection (1).

Penalty : In the case of a corporation—\$1,000 for a first offence and \$2,000 for a second or subsequent offence. In any other case—\$500 or imprisonment for six months for  
20 first offence or \$1,000 or imprisonment for twelve months for a second or subsequent offence.

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**PART III.**

**RESTRICTED PUBLICATIONS.**

**11.** In this Part—

Interpreta-  
tion of Part.

25 “restricted publication” means—

- (a) a publication classified by the Minister under section 14 as a restricted publication;
- (b) a publication that is within a class of publication classified by the Minister under  
30 section 14 as a restricted class of publication;

“publication”



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5 “publication” means book, paper, newspaper, pamphlet, magazine, periodical, letterpress or printed matter, or any part thereof, and any writing, print, picture, photograph, lithograph, drawing or representation, or any part thereof.

12. (1) The Governor may appoint a State Advisory Committee on Publications consisting of not less than three, and not more than seven, persons who shall have and may exercise and perform the powers, authorities, duties and  
10 functions conferred or imposed on the Committee by or under this Act.

(2) Of the members of the Committee—

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

(3) Of the members of the Committee, one shall, by the instrument of his appointment as a member of the Committee or by a separate instrument, be appointed as the  
20 chairman of the Committee and another shall, in like manner, be appointed as deputy chairman of the Committee.

(4) A person who is of or above the age of sixty-five years is not eligible for appointment as a member of the Committee.

25 (5) Subject to this section and section 25, a member of the Committee holds office for a period of five years but is eligible for reappointment.

(6)



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(6) A member of the Committee vacates his office if he—

- (a) dies;
- 5 (b) becomes a bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes any assignment of his estate for their benefit;
- 10 (c) within the meaning of the Mental Health Act, 1958, becomes a temporary patient, a continued treatment patient, a protected person or an incapable person, or if he becomes a person under detention within the meaning of Part VII of that Act;
- (d) resigns his office by writing under his hand addressed to the Minister;
- 15 (e) attains the age of sixty-five years;
- (f) is removed from office by the Governor.

(7) Where a vacancy occurs in the office of a member of the Committee otherwise than by reason of the expiration of his term of office, the Governor may, subject to subsection 20 (2), appoint a person to the vacant office for the residue of the term of office of his predecessor.

(8) A member of the Committee is entitled to remuneration and expenses at rates from time to time fixed by the Governor.

25 (9) Meetings of the Committee shall be convened by the chairman and shall be so convened at such times as the chairman thinks fit and whenever he is requested so to do by the Minister.

(10) A majority of the members of the Committee 30 constitutes a quorum for the purposes of a meeting of the Committee.



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(11) The powers, authorities, duties and functions conferred or imposed upon the Committee may only be exercised or performed by the majority decision of the members of the Committee present and voting at a duly convened  
5 meeting of the Committee at which a quorum is present.

(12) If, at a meeting of the Committee the voting on any matter is equal, the chairman is entitled to a casting vote in addition to his deliberative vote.

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

(14) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment by the  
15 Governor of a member of the Committee and any such member is not, in his capacity as such a member, subject to those provisions.

(15) The office of a member of the Committee is not, for the purposes of the Constitution Act, 1902, an office  
20 of profit under the Crown.

**13.** (1) Where the Minister refers a publication or class of publication to the Committee for its report, the Committee shall report to the Minister whether or not, in the opinion of the Committee, the publication or class of publication—

Powers and functions of Committee.

- 25 (a) has any merit in the field of literature, art, medicine or science ;
- (b) is, by reason of the nature or extent of references therein to matters of sex, drug addiction, horror, crime, cruelty or violence, undesirable reading for  
30 persons under the age of eighteen years and should be classified as a restricted publication or class of publication ; or
- (c) should be the subject of an order under section 19.

(2)



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(2) The Committee shall report to the Minister on any matter arising out of the administration of this Act that is referred to it by the Minister.

5 (3) Where the Committee is obliged under this section to make a report on a publication or class of publication or on any other matter, a member of the Committee who was, or was part of, the minority when the decision to make the report was made may himself make a report to the Minister.

10 **14.** (1) After considering a report made to him under section 13 the Minister may, by order published in the Gazette, classify a publication as a restricted publication or a class of publication as a restricted class of publication. Restricted publications.

15 (2) Where the Minister so specifies in an order under subsection (1), any subsequent edition, series, number or issue of the publication or class of publication to which the order relates is a restricted publication or class of restricted publication notwithstanding any reconstruction (whether by way of alteration in title, change of subject, characters, story  
20 or other features or otherwise howsoever) of the publication or class of publication.

(3) The publication of an order under subsection (1) is evidence that all conditions precedent to its making have been complied with.

25 **15.** (1) A person contravenes this section if, in a street or public place (not being a shop)— Offences in relation to restricted publications.

(a) he distributes, disseminates, circulates, exhibits, displays, lends, sells, offers for sale, lets on hire, or offers to let on hire, a restricted publication; or

30 (b) he has a restricted publication in his possession apparently for the purpose of doing an act referred to in paragraph (a) in a street or public place (not being a shop).

(2)



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*Indecent and Restricted Publications.*

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(2) A person contravenes this section if he exhibits a restricted publication to public view in the window or doorway of a shop.

(3) Subject to subsection (4), a person contravenes  
5 this section if, in a shop—

(a) he displays or exhibits a restricted publication to public view; or

(b) he renders a restricted publication readily accessible to the public.

10 (4) It is not a contravention of this section to display or exhibit a restricted publication in a shop, or render a restricted publication readily accessible in a shop, if it is displayed, exhibited or rendered accessible only to persons of or above the age of eighteen years.

15 (5) A person contravenes this section if, in a street or public place (including a shop), he publishes any advertising material of such a nature that another person may thereby be informed—

(a) that a publication is a restricted publication; or

20 (b) that an identifiable place or person may be resorted to for the purpose of perusing or obtaining a publication referred to in that advertising material in such a manner as to convey that it is a restricted publication,

25 unless the publishing 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.

(6) A person contravenes this section if he sells,  
30 offers for sale, lets on hire or offers to let on hire, to a person under the age of eighteen years, a restricted publication.

(7)



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(7) A person contravenes this section if he sends or delivers a restricted publication, or any advertising material referred to in subsection (5), to a building or any land used in connection therewith (whether or not the building or land is in the State) unless—

- (a) it is sent or delivered at the request of an occupier of the building or land who is of or over the age of eighteen years; and
- (b) it is sent or delivered in such a manner as not to be displayed to, or receivable by, a person other than that occupier.

(8) Where a person has been convicted of an offence against this Act constituted by a contravention of this section, or where in respect of any person such an offence has been found by a court to have been proved, there shall be forfeited to Her Majesty—

- (a) in the case of a contravention referred to in subsection (1) or (6)—all restricted publications found at the time of commission of the offence in the possession or apparently under the control of that person;
- (b) in the case of a contravention referred to in subsection (2) or (3)—all restricted publications that, at the time of the commission of the offence were displayed, exhibited or rendered accessible, in the manner so referred to, in the shop, or in the window or doorway of the shop, involved in the commission of the offence;
- (c) in the case of a contravention referred to in subsection (5)—all advertising material of the nature so referred to found, at the time of the commission of the offence, in the possession or apparently under the control of that person.

(9)



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(9) It is a defence to a prosecution for a contravention referred to in subsection (3) if it is proved—

- 5 (a) that the defendant took all such steps as could reasonably have been taken to avoid committing the offence; or
- 10 (b) that he, or his servant or agent, in displaying or exhibiting the publication involved to a person under the age of eighteen years, or in rendering it readily accessible to such a person, had reasonable grounds for believing, and did believe, that person to be of or over that age.

(10) It is a defence to a prosecution for a contravention referred to in subsection (6) if it is proved that the defendant had reasonable grounds for believing, and did believe, that the person to whom the publication involved was sold, let on hire or offered was of or over the age of eighteen years.

Penalty : In the case of a corporation—\$500 for a first offence and \$1,000 for a second or subsequent offence. In any other case—\$250 or imprisonment for three months for a first offence and \$500 or imprisonment for six months for a second or subsequent offence.

16. (1) Where a member of the police force has reasonable cause to suspect that a person in a street or public place (including a shop) who is in possession of a restricted publication is under the age of eighteen years, he may require that person to state his correct age, name and address and, if the member of the police force has reasonable cause to suspect that the age, name or address stated is false, he may require that person to produce, within a reasonable time, evidence of the correctness of the age, name or address stated.

Member of the police force may require certain particulars.

(2) A person contravenes this section if he fails or refuses to comply with a requirement referred to in subsection (1).

35 Penalty : \$100.



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17. Nothing in this Part shall be construed as exempting from the operation of Part II a restricted publication that is an indecent article.

Restricted publication may be indecent article.

## PART IV.

## GENERAL.

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18. Where a corporation commits an offence against this Act, a person who, at the time of the commission of the offence, was within the meaning of the Companies Act, 1961, a director of, or was a person concerned in the management of, the corporation is, without affecting the liability of the corporation to be punished for the offence, guilty of the same offence and liable to the penalty or imprisonment prescribed in the case of such an offence by a person other than a corporation unless he satisfies the court that the offence was committed by the corporation without his knowledge or that he used all due diligence to prevent the commission of the offence by the corporation.

Liability of directors, etc., where offence committed by corporation.

19. Where the Minister, by order published in the Gazette, directs on the advice of the Committee that a specified book, magazine or periodical is not to be the subject of proceedings for a contravention of section 5 and is exempt from seizure pursuant to section 6 or 8 no such proceedings shall be instituted, and no such seizure is lawful, while the order remains in force.

Certain publications not to give rise to certain proceedings.

20. (1) Proceedings for a contravention of a provision of this Act (sections 15 and 16 excepted) in respect of a book, magazine or periodical may be instituted only with the prior approval of the Minister.

No proceedings without approval of Minister.



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(2) The Minister may give an approval under subsection (1) in respect of a specified book, magazine or periodical without specifying the contravention or any party to the proceedings.

5 (3) A document that—

(a) purports to signify that the approval of a Minister of the Crown to the institution of proceedings for a contravention of a provision of this Act in respect of a specified book, magazine or periodical was given on a specified date; and

10 (b) bears a signature purporting to be the signature of a Minister of the Crown.

is, without proof of the signature or of the official character of the signatory, evidence of the approval purporting to be 15 signified by the document and conclusive evidence that the approval was given by the Minister referred to in subsection (1).

21. Proceedings for a contravention of a provision of this Act shall be heard and determined by a stipendiary magistrate sitting in petty sessions.

Proceedings under Act to be before stipendiary magistrate.

22. In any proceedings under this Act—

(a) the opinion of an expert as to whether or not an article has any merit in the field of literature, art, medicine or science and, if so, the nature and extent thereof is admissible evidence; and

Admissibility of certain evidence.

25 (b) evidence directed towards establishing contemporary community standards of decency is not admissible.

23. Notwithstanding anything in any contract or agreement entered into before or after the commencement of this Act, a distributor, bookseller, newsagent or other person is not liable for breach of contract by reason only of his rejecting an

Exoneration from liability under certain contracts.



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an article that is delivered to him, or by reason only of his refusing to accept delivery of or to deal in any such article, where—

- 5 (a) the article is a restricted publication within the meaning of Part III, or that person reasonably and bona fide believes that his acceptance of delivery of, or his possession of, or his dealing in, the article may render him liable to be prosecuted for publishing an obscene or blasphemous libel or for any offence against this Act; and
- 10 (b) he gives to the person from whom he has received, or is to receive, delivery of the article notice in writing of his rejection thereof, or refusal to accept delivery thereof, or to deal therein, and of the reason therefor, as soon as practicable after he becomes aware of the nature of the article.
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24. (1) Proceedings in respect of any damage or injury may not be instituted or maintained against any person in respect of anything done or omitted pursuant to this Act or in the exercise or performance of a power, authority, duty or function conferred or imposed by this Act until the expiration of the period of one month that next succeeds the giving to that person of a notice specifying—

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- (a) the cause of action;
- 25 (b) the time and place at which the damage or injury was sustained; and
- (c) the name and place of abode or business of the intended plaintiff and of his attorney, if any.

(2) Where a notice referred to in subsection (1) is given in relation to a cause of action arising out of damage to property, the intended plaintiff shall permit a person authorised

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by



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by the Minister to inspect the property damaged and shall give that person such facilities and information as are necessary to enable the value of the property damaged, and the amount of money, if any, expended in repairing the damage,  
5 to be ascertained.

(3) At the hearing of any proceedings referred to in subsection (1) the plaintiff may not adduce evidence of any cause of action not stated in the notice he is required to give under subsection (1) but, at any stage of the proceedings the  
10 court concerned may if it considers it to be just and reasonable so to do—

- (a) permit the amendment of any defect in the notice on such terms and conditions as it thinks fit; or
- 15 (b) permit the proceedings to be maintained notwithstanding any non-compliance, or insufficient compliance, with the provisions of this section.

(4) Proceedings referred to in subsection (1) may not be commenced after the expiration of the period of three months next after the cause of action arises but, where application for an extension of the period in which the proceedings  
20 may be instituted is made to a court in which the proceedings, if lawful, may be instituted and maintained, that court may, for sufficient cause shown or if it considers it reasonable in the circumstances so to do, grant an extension of that period  
25 on such terms and conditions, if any, as it thinks fit.

(5) Application for an extension of time under subsection (4) may not be made later than six months after the cause of action arises.

(6) A person to whom a notice is given under subsection (1) may, at any time within one month after service of the notice, tender to the plaintiff or intended plaintiff, or to his agent or attorney, sufficient amends and, if the tender is not accepted, may plead the tender as a defence.

(7)



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(7) Proceedings may not be instituted or maintained by or in favour of any person against the Board or the Committee, or any member of the Board or Committee, or any other person acting under the direction of the Board or 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.

25. (1) A person who, immediately before the commencement of this Act, held office as a member, or as chairman, or as deputy chairman, of the State Advisory Committee on Publications as then constituted continues in office on and after that commencement as if he had been appointed as such under section 12 to hold office, subject to this Act, for the residue of the term of office for which he had been appointed under the Acts repealed by this Act.

Savings and transitional provisions.

(2) Where any thing was seized or attached before the commencement of this Act pursuant to a power conferred by the Acts repealed by this Act, the provisions of the Acts so repealed continue to apply to and in respect of the thing seized or attached as if this Act had not been enacted.

(3) Where—

- 25 (a) before the commencement of this Act the Minister referred for the consideration of the State Advisory Committee on Publications a publication or class of publication or a matter arising out of the administration of the Acts repealed by this Act; or
- 30 (b) before or after that commencement the Minister received or receives a report by that Committee on a publication, class of publication or matter that, before that commencement, was referred to it for consideration,

the reference or report, as the case may be, shall be deemed to be a reference or report pursuant to section 13.

(4)



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(4) To the extent that a determination by the Minister under the Acts repealed by this Act with respect to a restricted publication or a restricted class of publication is in force immediately before that commencement, the publication or class of publication shall, in relation to any thing done or omitted to be done after that commencement, be deemed to have been classified by the Minister, by an order under section 14 published at the commencement of this Act, as a restricted publication or, as the case may be, as a restricted class of publication.

(5) Where a book, magazine or periodical was the subject of a determination by the Minister in force immediately before the commencement of this Act having the effect of forbidding the institution of proceedings under a provision of the Acts repealed by this Act in respect of the book, magazine or periodical, the Minister shall be deemed to have directed, by an order under section 19 published at that commencement, that the book, magazine or periodical—

- (a) is not to be the subject of proceedings for a contravention of section 5; and
- (b) is exempt from seizure under section 6 or 8.

(6) Section 20 applies, in respect of an approval given by the Minister before the commencement of this Act, as if that section had been in force at the time the approval was given.

(7) Nothing in this section affects any saving effected by the Interpretation Act, 1897.



*Indecent and Restricted Publications.*

## SCHEDULE.

Sec. 2.

Citation.	Short title.	Extent of repeal.
No. 12, 1901 ..	Obscene and Indecent Publications Act 1901.	The whole Act.
5 No. 12, 1908 ..	Police Offences (Amendment) Act, 1908.	Part V.
No. 36, 1946 ..	Obscene and Indecent Publications (Amendment) Act, 1946.	The whole Act.
10 No. 10, 1955 ..	Obscene and Indecent Publications (Amendment) Act, 1955.	The whole Act.
No. 54, 1967 ..	Obscene and Indecent Publications (Amendment) Act, 1967.	The whole Act.
No. 26, 1968 ..	Obscene and Indecent Publications (Amendment) Act, 1968.	The whole Act.

BY AUTHORITY

V. C. N. BLIGHT, C.B.E., GOVERNMENT PRINTER, NEW SOUTH WALES—1973

[20c]



Indecent and Restrictive Publications

Sec. 2.

SCHEDULE

Chapter	Short title	Extent of repeal
No. 17, 1901	Obscene and Indecent Publications Act, 1901.	The whole Act.
No. 12, 1908	Police Offences (Amendment) Act, Part V, 1908.	
No. 26, 1916	Obscene and Indecent Publications (Amendment) Act, 1916.	The whole Act.
No. 10, 1922	Obscene and Indecent Publications (Amendment) Act, 1922.	The whole Act.
No. 24, 1957	Obscene and Indecent Publications (Amendment) Act, 1957.	The whole Act.
No. 36, 1968	Obscene and Indecent Publications (Amendment) Act, 1968.	The whole Act.



No. , 1973.

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# A BILL

To require books, magazines, periodicals and certain other articles to conform to certain standards of decency; to restrict the circulation and display of certain books, magazines and periodicals; to prohibit certain advertisements; to repeal the Obscene and Indecent Publications Act 1901; and for purposes connected therewith.

[MR GRIFFITH—6 March, 1973.]

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BE



*Indecent and Restricted Publications.*

5 **B**E 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 :—

1. This Act may be cited as the "Indecent and Restricted Short title. Publications Act, 1973".

2. The Acts specified in the Schedule are, to the extent Repeals. so specified, hereby repealed.

10 3. This Act is divided, as follows :—

Division of Act.

PART I.—PRELIMINARY—ss. 1–4.

PART II.—INDECENT ARTICLES—ss. 5–10.

PART III.—RESTRICTED PUBLICATIONS—ss. 11–17.

PART IV.—GENERAL—ss. 18–25.

15 SCHEDULE.

4. (1) In this Act, except to the extent that the context Interpretation. or subject-matter otherwise indicates or requires—

"article" includes any thing—

- 20 (a) that contains or embodies matter to be read or looked at, or both;
- (b) that is to be looked at;
- (c) that is a record; or
- 25 (d) that may be used, either alone or as one of a set, for the production or manufacture therefrom of any thing referred to in paragraph (a), (b) or (c);

"Board"



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*Indecent and Restricted Publications.*

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5 “Board” means the National Literature Board of Review constituted under the Customs (National Literature Board of Review) Regulations made under the Customs Act 1901 of the Parliament of the Commonwealth and includes any successor to that Board and any person or body of persons performing, in relation to the administration of this Act, the like functions;

10 “Committee” means the State Advisory Committee on Publications constituted under this Act;

“justice” means justice of the peace;

“premises” includes any structure, building, vehicle or vessel, or any part thereof, and any place whether built on or not, or any part thereof;

15 “publish” includes—

(a) distribute, disseminate, circulate, deliver, send, exhibit, lend, sell, offer for sale, let on hire and offer to let on hire;

20 (b) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a);

25 (c) print, photograph or make in any other manner (whether of the same or of a different kind or nature) for the purpose of doing an act so referred to or to enable such an act to be done.

30 “record” means a gramophone record or a wire or tape, or a film, and any other thing of the same or of a different kind or nature, on which is recorded a sound or picture and from which, with the aid of suitable apparatus, the sound or picture may be produced, whether or not it is in a distorted or altered form.



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*Indecent and Restricted Publications.*

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(2) For the purposes of this Act, but without prejudice to the generality of the word "indecent", an article is indecent—

- 5 (a) if it describes, depicts, expresses or otherwise deals with; or
- (b) where it is a record, if it may be used to produce a sound or picture that describes, depicts, expresses or otherwise deals with,

10 matters relating to sex, drug addiction, horror, crime, cruelty or violence, or any other subject-matter, in a manner, or to an extent, that departs from contemporary community standards of decency, regard being had to the nature of the article, any merit it may have in the field of literature, art, medicine or science and, where it is published, to the  
15 circumstances of its publication.

(3) For the purposes of this Act, but without prejudice to the generality of the definition of "publish" in subsection (1)—

- 20 (a) a person publishes a positive or negative photograph if he uses it, or makes it available for use, to make a positive or negative picture in a form visible by reflected or transmitted light;
- (b) a person publishes a record if he causes the sound or picture recorded thereon to be produced, whether  
25 or not it is produced in a distorted or altered form.

(4) A film that would, but for this subsection, be an indecent article is not an indecent article if it is registered, or exempted from registration, by or under the Theatres and Public Halls Act, 1908.

(5)



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*Indecent and Restricted Publications.*

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(5) For the purposes of this Act an article may be indecent notwithstanding that part of the article is not indecent.

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**PART II.**

5

**INDECENT ARTICLES.**

**5.** (1) A person contravenes this section if he publishes, or causes to be published, or assists in publishing, an indecent article. Offence relating to publication of indecent article.

(2) The court that hears and determines the matter of an information for a contravention of this section may, if it finds the charge proved (whether or not a conviction is recorded) order that the article to which the information relates and, where the article was seized pursuant to a special warrant issued under section 6 (1), any other article seized pursuant to the warrant, be forfeited to Her Majesty.

Penalty : In the case of a corporation—\$1,000 for a first offence and \$2,000 for a second or subsequent offence. In any other case—\$500 or imprisonment for six months for a first offence and \$1,000 or imprisonment for twelve months for a second or subsequent offence.

**6.** (1) Where a complaint is made on oath to a stipendiary magistrate or two justices to the effect that the complainant has reason to suspect, and believes— Special warrant to search for and seize indecent articles.

(a) that an article that may reasonably be suspected of being an indecent article is kept in or on specified premises for the purpose of being published; or  
25 (b)



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*Indecent and Restricted Publications.*

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(b) that such an article has been published in, on  
or from specified premises,

the magistrate or justices may, if satisfied that the belief of  
the complainant is well founded, authorise by special warrant  
5 any member of the police force to enter those premises, to  
search for and seize any articles found therein or thereon that  
may reasonably be suspected of being indecent articles and  
to produce by means of any suitable apparatus (whether found  
on the premises or not) a sound or picture from any record  
10 found in or on the premises.

(2) In the execution of a special warrant issued under  
subsection (1), a member of the police force may take with  
him such assistants as he thinks necessary and may, by  
breaking down doors or otherwise, use, or authorise his  
15 assistants to use, force in gaining the entry authorised by the  
special warrant.

7. (1) Where an article has been seized pursuant to a special warrant issued under section 6 (1), it shall be returned to the premises in or on which it was seized unless, not later  
20 than one month after the seizure, an information is laid  
against a person for a contravention of section 5 with respect  
to the article (or an article of which it is a copy) or a  
member of the police force reports the seizure to a justice  
who shall thereupon issue his summons calling on the person  
25 who, at the time of the seizure of the article, was occupying  
or using the premises entered by virtue of the warrant to  
appear before a court of petty sessions constituted by a  
stipendiary magistrate to show cause why the article and  
any other article seized pursuant to the warrant should not  
30 be forfeited to Her Majesty.

Summons to  
show cause  
against  
forfeiture  
of article  
may issue.

(2)



*Indecent and Restricted Publications.*

(2) Where a summons issues under subsection (1) with respect to any articles, the court before which it is returned may order that there be forfeited to Her Majesty—

- 5
- (a) such of the articles as are not claimed by the person summoned, or by some other person; or
  - (b) where the person summoned, or some other person, claims any of the articles—such of the articles claimed as are found by the court to be indecent.

8. (1) A member of the police force may seize any article that is in a public place if it may reasonably be suspected of being an indecent article.

Suspected  
indecent  
article in  
public  
place.

(2) A member of the police force who seizes an article under subsection (1) shall take it to a police station and shall, unless he brings a person before a stipendiary magistrate charged with a contravention of section 5 with respect to the article, report the seizure in writing to a court of petty sessions.

(3) Where any article is seized under subsection (1), a court of petty sessions constituted by a stipendiary magistrate may, unless the article has been forfeited pursuant to section 5 (2), order that the article be forfeited to Her Majesty if—

- 25
- (a) within the period of six months that next succeeds the seizure of the article no person applies to take possession of the article; or
  - (b) a person applies within that period to take possession of the article and the court finds that the article is indecent.



*Indecent and Restricted Publications.*

9. Where an article is seized pursuant to a special warrant issued under section 6 (1) or pursuant to section 8 (1), a court of petty sessions may order the return of the article to the person who appears to be lawfully entitled to possession thereof if the court finds that the article, or an article of which it is a copy, is not indecent—

Return of seized article.

- (a) at the hearing and determination of an information for a contravention of section 5 with respect to the article; or
- (b) where the article has not been forfeited pursuant to section 5 (2)—
- (i) on the return of a summons issued pursuant to section 7 (1); or
- (ii) on an application referred to in section 8 (3) (b).

10. (1) This section applies to a business an object of which is the sale or disposal of any article, material, compound, preparation, device or other thing (whether of the same or of a different kind or nature) that is primarily concerned with, or is used or intended to be used in connection with, sexual behaviour but is not printed matter.

Offences relating to certain type of business.

(2) A person other than a corporation contravenes this section if he carries on or manages a business to which this section applies and he advertises, or attempts to advertise, or counsels or procures a person to advertise, in any manner the nature of the object of his business referred to in subsection (1).

(3) A corporation contravenes this section if—

(a) it carries on or manages a business to which this section applies; and

(b) the corporation, or a director, secretary or employee of the corporation, advertises, or attempts to advertise, or counsels or procures a person to advertise, in any manner the nature of the object of its business referred to in subsection (1).

(4)



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*Indecent and Restricted Publications.*

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(4) For the purposes of subsections (2) and (3), it is not an advertisement of the nature of an object of a business to which this section applies to make the object known only to a person, or the servant or agent of a person, who carries on a business or undertaking, or practises a profession, that ordinarily involves selling or disposing of, or advising on or prescribing the use of, any article, material, compound, preparation or device referred to in subsection (1).

(5) A person contravenes this section if, in or in connection with the carrying on of a business to which this section applies, he exhibits or displays in a manner visible from a public place, or visible to a person who has not consented to or requested the exhibition or display, any article, material, compound, preparation, device or other thing referred to in subsection (1).

Penalty : In the case of a corporation—\$1,000 for a first offence and \$2,000 for a second or subsequent offence. In any other case—\$500 or imprisonment for six months for a first offence or \$1,000 or imprisonment for twelve months for a second or subsequent offence.

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PART III.

RESTRICTED PUBLICATIONS.

11. In this Part—

Interpreta-  
tion of Part.

25 “restricted publication” means—

- (a) a publication classified by the Minister under section 14 as a restricted publication ;
- (b) a publication that is within a class of publication classified by the Minister under section 14 as a restricted class of publication ;

30

“publication”



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*Indecent and Restricted Publications.*

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5 “publication” means book, paper, newspaper, pamphlet, magazine, periodical, letterpress or printed matter, or any part thereof, and any writing, print, picture, photograph, lithograph, drawing or representation, or any part thereof.

10 **12.** (1) The Governor may appoint a State Advisory Committee on Publications consisting of not less than three, and not more than seven, persons who shall have and may exercise and perform the powers, authorities, duties and functions conferred or imposed on the Committee by or under this Act.

(2) Of the members of the Committee—

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

20 (3) Of the members of the Committee, one shall, by the instrument of his appointment as a member of the Committee or by a separate instrument, be appointed as the chairman of the Committee and another shall, in like manner, be appointed as deputy chairman of the Committee.

(4) A person who is of or above the age of sixty-five years is not eligible for appointment as a member of the Committee.

25 (5) Subject to this section and section 25, a member of the Committee holds office for a period of five years but is eligible for reappointment.

(6)



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*Indecent and Restricted Publications.*

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(6) A member of the Committee vacates his office if he—

- (a) dies;
- 5 (b) becomes a bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes any assignment of his estate for their benefit;
- 10 (c) within the meaning of the Mental Health Act, 1958, becomes a temporary patient, a continued treatment patient, a protected person or an incapable person, or if he becomes a person under detention within the meaning of Part VII of that Act;
- (d) resigns his office by writing under his hand addressed to the Minister;
- 15 (e) attains the age of sixty-five years;
- (f) is removed from office by the Governor.

(7) Where a vacancy occurs in the office of a member of the Committee otherwise than by reason of the expiration of his term of office, the Governor may, subject to subsection 20 (2), appoint a person to the vacant office for the residue of the term of office of his predecessor.

(8) A member of the Committee is entitled to remuneration and expenses at rates from time to time fixed by the Governor.

25 (9) Meetings of the Committee shall be convened by the chairman and shall be so convened at such times as the chairman thinks fit and whenever he is requested so to do by the Minister.

(10) A majority of the members of the Committee 30 constitutes a quorum for the purposes of a meeting of the Committee.



*Indecent and Restricted Publications.*

(11) The powers, authorities, duties and functions conferred or imposed upon the Committee may only be exercised or performed by the majority decision of the members of the Committee present and voting at a duly convened  
5 meeting of the Committee at which a quorum is present.

(12) If, at a meeting of the Committee the voting on any matter is equal, the chairman is entitled to a casting vote in addition to his deliberative vote.

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

(14) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment by the  
15 Governor of a member of the Committee and any such member is not, in his capacity as such a member, subject to those provisions.

(15) The office of a member of the Committee is not, for the purposes of the Constitution Act, 1902, an office  
20 of profit under the Crown.

**13.** (1) Where the Minister refers a publication or class of publication to the Committee for its report, the Committee shall report to the Minister whether or not, in the opinion of the Committee, the publication or class of publication—

Powers and functions of Committee.

- 25 (a) has any merit in the field of literature, art, medicine or science;
- (b) is, by reason of the nature or extent of references therein to matters of sex, drug addiction, horror, crime, cruelty or violence, or for any other reason,  
30 undesirable reading for persons under the age of eighteen years and should be classified as a restricted publication or class of publication; or
- (c) should be the subject of an order under section 19.

(2)



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*Indecent and Restricted Publications.*

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(2) The Committee shall report to the Minister on any matter arising out of the administration of this Act that is referred to it by the Minister.

5 (3) Where the Committee is obliged under this section to make a report on a publication or class of publication or on any other matter, a member of the Committee who was, or was part of, the minority when the decision to make the report was made may himself make a report to the Minister.

10 **14.** (1) After considering a report made to him under section 13 the Minister may, by order published in the Gazette, classify a publication as a restricted publication or a class of publication as a restricted class of publication. Restricted publications.

(2) Where the Minister so specifies in an order under 15 subsection (1), any subsequent edition, series, number or issue of the publication or class of publication to which the order relates is a restricted publication or class of restricted publication notwithstanding any reconstruction (whether by way of alteration in title, change of subject, characters, story 20 or other features or otherwise howsoever) of the publication or class of publication.

(3) The publication of an order under subsection (1) is evidence that all conditions precedent to its making have been complied with.

25 **15.** (1) A person contravenes this section if, in a street or public place (not being a shop)— Offences in relation to restricted publications.

(a) he distributes, disseminates, circulates, exhibits, displays, lends, sells, offers for sale, lets on hire, or offers to let on hire, a restricted publication; or

30 (b) he has a restricted publication in his possession apparently for the purpose of doing an act referred to in paragraph (a) in a street or public place (not being a shop).

(2)



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*Indecent and Restricted Publications.*

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(2) A person contravenes this section if he exhibits a restricted publication to public view in the window or doorway of a shop.

(3) Subject to subsection (4), a person contravenes  
5 this section if, in a shop—

(a) he displays or exhibits a restricted publication to public view; or

(b) he renders a restricted publication readily accessible to the public.

10 (4) It is not a contravention of this section to display or exhibit a restricted publication in a shop, or render a restricted publication readily accessible in a shop, if it is displayed, exhibited or rendered accessible only to persons of or above the age of eighteen years.

15 (5) A person contravenes this section if, in a street or public place (including a shop), he publishes any advertising material of such a nature that another person may thereby be informed—

(a) that a publication is a restricted publication; or

20 (b) that an identifiable place or person may be resorted to for the purpose of perusing or obtaining a publication referred to in that advertising material in such a manner as to convey that it is a restricted publication,

25 unless the publishing 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.

(6) A person contravenes this section if he sells,  
30 offers for sale, lets on hire or offers to let on hire, to a person under the age of eighteen years, a restricted publication.

(7)



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*Indecent and Restricted Publications.*

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(7) A person contravenes this section if he sends or delivers a restricted publication, or any advertising material referred to in subsection (5), to a building or any land used in connection therewith (whether or not the building or land is in the State) unless—

- 5
- (a) it is sent or delivered at the request of an occupier of the building or land who is of or over the age of eighteen years; and
  - 10 (b) it is sent or delivered in such a manner as not to be displayed to, or receivable by, a person other than that occupier.

(8) Where a person has been convicted of an offence against this Act constituted by a contravention of this section, or where in respect of any person such an offence has been found by a court to have been proved, there shall be forfeited to Her Majesty—

- 15
- 20 (a) in the case of a contravention referred to in subsection (1) or (6)—all restricted publications found at the time of commission of the offence in the possession or apparently under the control of that person;
  - 25 (b) in the case of a contravention referred to in subsection (2) or (3)—all restricted publications that, at the time of the commission of the offence were displayed, exhibited or rendered accessible, in the manner so referred to, in the shop, or in the window or doorway of the shop, involved in the commission of the offence;
  - 30 (c) in the case of a contravention referred to in subsection (5)—all advertising material of the nature so referred to found, at the time of the commission of the offence, in the possession or apparently under the control of that person.

(9)



*Indecent and Restricted Publications.*

(9) It is a defence to a prosecution for a contravention referred to in subsection (3) if it is proved—

- 5 (a) that the defendant took all such steps as could reasonably have been taken to avoid committing the offence; or
- 10 (b) that he, or his servant or agent, in displaying or exhibiting the publication involved to a person under the age of eighteen years, or in rendering it readily accessible to such a person, had reasonable grounds for believing, and did believe, that person to be of or over that age.

(10) It is a defence to a prosecution for a contravention referred to in subsection (6) if it is proved that the defendant had reasonable grounds for believing, and did  
15 believe, that the person to whom the publication involved was sold, let on hire or offered was of or over the age of eighteen years.

Penalty : In the case of a corporation—\$500 for a first offence and \$1,000 for a second or subsequent offence. In  
20 any other case—\$250 or imprisonment for three months for a first offence and \$500 or imprisonment for six months for a second or subsequent offence.

16. (1) Where a member of the police force has reasonable cause to suspect that a person in a street or public place  
25 (including a shop) who is in possession of a restricted publication is under the age of eighteen years, he may require that person to state his correct age, name and address and, if the member of the police force has reasonable cause to suspect that the age, name or address stated is false, he may require  
30 that person to produce, within a reasonable time, evidence of the correctness of the age, name or address stated.

Member of the police force may require certain particulars.

(2) A person contravenes this section if he fails or refuses to comply with a requirement referred to in subsection (1).

35 Penalty : \$100.



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*Indecent and Restricted Publications.*

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17. Nothing in this Part shall be construed as exempting from the operation of Part II a restricted publication that is an indecent article.

Restricted publication may be indecent article.

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PART IV.

GENERAL.

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18. Where a corporation commits an offence against this Act, a person who, at the time of the commission of the offence, was within the meaning of the Companies Act, 1961, a director of, or was a person concerned in the management of, the corporation is, without affecting the liability of the corporation to be punished for the offence, guilty of the same offence and liable to the penalty or imprisonment prescribed in the case of such an offence by a person other than a corporation unless he satisfies the court that the offence was committed by the corporation without his knowledge or that he used all due diligence to prevent the commission of the offence by the corporation.

Liability of directors, etc., where offence committed by corporation.

19. Where the Minister, by order published in the Gazette, directs on the advice of the Committee that a specified book, magazine or periodical is not to be the subject of proceedings for a contravention of section 5 and is exempt from seizure pursuant to section 6 or 8 no such proceedings shall be instituted, and no such seizure is lawful, while the order remains in force.

Certain publications not to give rise to certain proceedings.

20. (1) Proceedings for a contravention of a provision of this Act (sections 15 and 16 excepted) in respect of a book, magazine or periodical may be instituted only with the prior approval of the Minister.

No proceedings without approval of Minister.



*Indecent and Restricted Publications.*

(2) The Minister may give an approval under subsection (1) in respect of a specified book, magazine or periodical without specifying the contravention or any party to the proceedings.

5 (3) A document that—

(a) purports to signify that the approval of a Minister of the Crown to the institution of proceedings for a contravention of a provision of this Act in respect of a specified book, magazine or periodical was given on a specified date; and

(b) bears a signature purporting to be the signature of a Minister of the Crown.

is, without proof of the signature or of the official character of the signatory, evidence of the approval purporting to be signified by the document and conclusive evidence that the approval was given by the Minister referred to in subsection (1).

21. Proceedings for a contravention of a provision of this Act shall be heard and determined by a stipendiary magistrate sitting in petty sessions.

Proceedings under Act to be before stipendiary magistrate.

22. In any proceedings under this Act—

(a) the opinion of an expert as to whether or not an article has any merit in the field of literature, art, medicine or science and, if so, the nature and extent thereof is admissible evidence; and

Admissibility of certain evidence.

(b) evidence directed towards establishing contemporary community standards of decency is not admissible.

23. Notwithstanding anything in any contract or agreement entered into before or after the commencement of this Act, a distributor, bookseller, newsagent or other person is not liable for breach of contract by reason only of his rejecting an

Exonerations from liability under certain contracts.



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*Indecent and Restricted Publications.*

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an article that is delivered to him, or by reason only of his refusing to accept delivery of or to deal in any such article, where—

- 5 (a) the article is a restricted publication within the meaning of Part III, or that person reasonably and bona fide believes that his acceptance of delivery of, or his possession of, or his dealing in, the article may render him liable to be prosecuted for publishing an obscene or blasphemous libel or for any  
10 offence against this Act; and
- (b) he gives to the person from whom he has received, or is to receive, delivery of the article notice in writing of his rejection thereof, or refusal to accept delivery thereof, or to deal therein, and of the reason  
15 therefor, as soon as practicable after he becomes aware of the nature of the article.

24. (1) Proceedings in respect of any damage or injury <sup>Notice of</sup> may not be instituted or maintained against any person in <sup>action.</sup> respect of anything done or omitted pursuant to this Act or  
20 in the exercise or performance of a power, authority, duty or function conferred or imposed by this Act until the expiration of the period of one month that next succeeds the giving to that person of a notice specifying—

- (a) the cause of action;
- 25 (b) the time and place at which the damage or injury was sustained; and
- (c) the name and place of abode or business of the intended plaintiff and of his attorney, if any.

(2) Where a notice referred to in subsection (1) is  
30 given in relation to a cause of action arising out of damage to property, the intended plaintiff shall permit a person authorised

by



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*Indecent and Restricted Publications.*

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by the Minister to inspect the property damaged and shall give that person such facilities and information as are necessary to enable the value of the property damaged, and the amount of money, if any, expended in repairing the damage, to be ascertained.

(3) At the hearing of any proceedings referred to in subsection (1) the plaintiff may not adduce evidence of any cause of action not stated in the notice he is required to give under subsection (1) but, at any stage of the proceedings the court concerned may if it considers it to be just and reasonable so to do—

- (a) permit the amendment of any defect in the notice on such terms and conditions as it thinks fit; or
- (b) permit the proceedings to be maintained notwithstanding any non-compliance, or insufficient compliance, with the provisions of this section.

(4) Proceedings referred to in subsection (1) may not be commenced after the expiration of the period of three months next after the cause of action arises but, where application for an extension of the period in which the proceedings may be instituted is made to a court in which the proceedings, if lawful, may be instituted and maintained, that court may, for sufficient cause shown or if it considers it reasonable in the circumstances so to do, grant an extension of that period on such terms and conditions, if any, as it thinks fit.

(5) Application for an extension of time under subsection (4) may not be made later than six months after the cause of action arises.

(6) A person to whom a notice is given under subsection (1) may, at any time within one month after service of the notice, tender to the plaintiff or intended plaintiff, or to his agent or attorney, sufficient amends and, if the tender is not accepted, may plead the tender as a defence.

(7)



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*Indecent and Restricted Publications.*

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(7) Proceedings may not be instituted or maintained by or in favour of any person against the Board or the Committee, or any member of the Board or Committee, or any other person acting under the direction of the Board or 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.

25. (1) A person who, immediately before the commencement of this Act, held office as a member, or as chairman, or as deputy chairman, of the State Advisory Committee on Publications as then constituted continues in office on and after that commencement as if he had been appointed as such under section 12 to hold office, subject to this Act, for the residue of the term of office for which he had been appointed under the Acts repealed by this Act.

Savings and transitional provisions.

(2) Where any thing was seized or attached before the commencement of this Act pursuant to a power conferred by the Acts repealed by this Act, the provisions of the Acts so repealed continue to apply to and in respect of the thing seized or attached as if this Act had not been enacted.

(3) Where—

- (a) before the commencement of this Act the Minister referred for the consideration of the State Advisory Committee on Publications a publication or class of publication or a matter arising out of the administration of the Acts repealed by this Act; or
- (b) before or after that commencement the Minister received or receives a report by that Committee on a publication, class of publication or matter that, before that commencement, was referred to it for consideration,

the reference or report, as the case may be, shall be deemed to be a reference or report pursuant to section 13.

(4)



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*Indecent and Restricted Publications.*

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(4) To the extent that a determination by the Minister under the Acts repealed by this Act with respect to a restricted publication or a restricted class of publication is in force immediately before that commencement, the publication  
5 or class of publication shall, in relation to any thing done or omitted to be done after that commencement, be deemed to have been classified by the Minister, by an order under section 14 published at the commencement of this Act, as a restricted publication or, as the case may be, as a restricted  
10 class of publication.

(5) Where a book, magazine or periodical was the subject of a determination by the Minister in force immediately before the commencement of this Act having the effect of forbidding the institution of proceedings under a provision  
15 of the Acts repealed by this Act in respect of the book, magazine or periodical, the Minister shall be deemed to have directed, by an order under section 19 published at that commencement, that the book, magazine or periodical—

- 20 (a) is not to be the subject of proceedings for a contravention of section 5; and
- (b) is exempt from seizure under section 6 or 8.

(6) Section 20 applies, in respect of an approval given by the Minister before the commencement of this Act, as if that section had been in force at the time the  
25 approval was given.

(7) Nothing in this section affects any saving effected by the Interpretation Act, 1897.

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SCHEDULE.



*Indecent and Restricted Publications.*

## SCHEDULE.

Sec. 2.

Citation.	Short title.	Extent of repeal.
No. 12, 1901 ..	Obscene and Indecent Publications Act 1901.	The whole Act.
5 No. 12, 1908 ..	Police Offences (Amendment) Act, 1908.	Part V.
No. 36, 1946 ..	Obscene and Indecent Publications (Amendment) Act, 1946.	The whole Act.
10 No. 10, 1955 ..	Obscene and Indecent Publications (Amendment) Act, 1955.	The whole Act.
No. 54, 1967 ..	Obscene and Indecent Publications (Amendment) Act, 1967.	The whole Act.
No. 26, 1968 ..	Obscene and Indecent Publications (Amendment) Act, 1968.	The whole Act.

BY AUTHORITY

V. C. N. BLIGHT, C.B.E., GOVERNMENT PRINTER, NEW SOUTH WALES—1973  
[20c]







## INDECENT AND RESTRICTED PUBLICATIONS BILL, 1973

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### EXPLANATORY NOTE

THE objects of this Bill are—

- (a) to modernise, in the light of decided cases, the law relating to indecency in so far as it relates to publications and other articles;
- (b) to create certain summary offences relating to indecent publications and other articles;
- (c) to authorise the seizure, pursuant to a special warrant, of suspected indecent articles;
- (d) to prohibit advertising and public displays by “sex shops”;
- (e) to continue the State Advisory Committee on Publications;
- (f) to regulate the public display of restricted publications;
- (g) to make provisions consequential upon or ancillary to the foregoing.



REPORT AND RECOMMENDATIONS

CHAPTER I

The following is a summary of the findings of the study.

- (1) The first finding is that the majority of the respondents are in the age group of 20 to 30 years.
- (2) The second finding is that the majority of the respondents are male.
- (3) The third finding is that the majority of the respondents are employed.
- (4) The fourth finding is that the majority of the respondents are from the urban areas.
- (5) The fifth finding is that the majority of the respondents are from the middle class.
- (6) The sixth finding is that the majority of the respondents are from the Hindu religion.
- (7) The seventh finding is that the majority of the respondents are from the Indian nationality.
- (8) The eighth finding is that the majority of the respondents are from the Indian state of Maharashtra.
- (9) The ninth finding is that the majority of the respondents are from the Indian city of Mumbai.
- (10) The tenth finding is that the majority of the respondents are from the Indian district of Mumbai.



No. , 1973.

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## A BILL

To require books, magazines, periodicals and certain other articles to conform to certain standards of decency; to restrict the circulation and display of certain books, magazines and periodicals; to prohibit certain advertisements; to repeal the Obscene and Indecent Publications Act 1901; and for purposes connected therewith.

[MR GRIFFITH—6 March, 1973.]

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BE



*Indecent and Restricted Publications.*

**B**E 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 :—

1. This Act may be cited as the "Indecent and Restricted Publications Act, 1973".

2. The Acts specified in the Schedule are, to the extent so specified, hereby repealed.

3. This Act is divided, as follows :—

Division of Act.

PART I.—PRELIMINARY—ss. 1-4.

PART II.—INDECENT ARTICLES—ss. 5-10.

PART III.—RESTRICTED PUBLICATIONS—ss. 11-17.

PART IV.—GENERAL—ss. 18-25.

SCHEDULE.

4. (1) In this Act, except to the extent that the context or subject-matter otherwise indicates or requires—

Interpretation.

"article" includes any thing—

- (a) that contains or embodies matter to be read or looked at, or both;
- (b) that is to be looked at;
- (c) that is a record; or
- (d) that may be used, either alone or as one of a set, for the production or manufacture therefrom of any thing referred to in paragraph (a), (b) or (c);

"Board"



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*Indecent and Restricted Publications.*

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5 “Board” means the National Literature Board of Review constituted under the Customs (National Literature Board of Review) Regulations made under the Customs Act 1901 of the Parliament of the Commonwealth and includes any successor to that Board and any person or body of persons performing, in relation to the administration of this Act, the like functions;

10 “Committee” means the State Advisory Committee on Publications constituted under this Act;

“justice” means justice of the peace;

“premises” includes any structure, building, vehicle or vessel, or any part thereof, and any place whether built on or not, or any part thereof;

15 “publish” includes—

- (a) distribute, disseminate, circulate, deliver, send, exhibit, lend, sell, offer for sale, let on hire and offer to let on hire;
- 20 (b) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a);
- 25 (c) print, photograph or make in any other manner (whether of the same or of a different kind or nature) for the purpose of doing an act so referred to or to enable such an act to be done.

30 “record” means a gramophone record or a wire or tape, or a film, and any other thing of the same or of a different kind or nature, on which is recorded a sound or picture and from which, with the aid of suitable apparatus, the sound or picture may be produced, whether or not it is in a distorted or altered form.



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*Indecent and Restricted Publications.*

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(2) For the purposes of this Act, but without prejudice to the generality of the word "indecent", an article is indecent—

- 5 (a) if it describes, depicts, expresses or otherwise deals with; or
- (b) where it is a record, if it may be used to produce a sound or picture that describes, depicts, expresses or otherwise deals with,

10 matters relating to sex, drug addiction, horror, crime, cruelty or violence, or any other subject-matter, in a manner, or to an extent, that departs from contemporary community standards of decency, regard being had to the nature of the article, any merit it may have in the field of literature, art, medicine or science and, where it is published, to the  
15 circumstances of its publication.

(3) For the purposes of this Act, but without prejudice to the generality of the definition of "publish" in subsection (1)—

- 20 (a) a person publishes a positive or negative photograph if he uses it, or makes it available for use, to make a positive or negative picture in a form visible by reflected or transmitted light;
- (b) a person publishes a record if he causes the sound or picture recorded thereon to be produced, whether  
25 or not it is produced in a distorted or altered form.

(4) A film that would, but for this subsection, be an indecent article is not an indecent article if it is registered, or exempted from registration, by or under the Theatres and Public Halls Act, 1908.

(5)



*Indecent and Restricted Publications.*

(5) For the purposes of this Act an article may be indecent notwithstanding that part of the article is not indecent.

**PART II.**

**5 INDECENT ARTICLES.**

**5.** (1) A person contravenes this section if he publishes, or causes to be published, or assists in publishing, an indecent article. Offence relating to publication of indecent article.

(2) The court that hears and determines the matter of an information for a contravention of this section may, if it finds the charge proved (whether or not a conviction is recorded) order that the article to which the information relates and, where the article was seized pursuant to a special warrant issued under section 6 (1), any other article seized pursuant to the warrant, be forfeited to Her Majesty.

Penalty : In the case of a corporation—\$1,000 for a first offence and \$2,000 for a second or subsequent offence. In any other case—\$500 or imprisonment for six months for a first offence and \$1,000 or imprisonment for twelve months for a second or subsequent offence.

**6.** (1) Where a complaint is made on oath to a stipendiary magistrate or two justices to the effect that the complainant has reason to suspect, and believes— Special warrant to search for and seize indecent articles.

- (a) that an article that may reasonably be suspected of being an indecent article is kept in or on specified premises for the purpose of being published; or
- (b)



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*Indecent and Restricted Publications.*

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(b) that such an article has been published in, on  
or from specified premises,

the magistrate or justices may, if satisfied that the belief of  
the complainant is well founded, authorise by special warrant  
5 any member of the police force to enter those premises, to  
search for and seize any articles found therein or thereon that  
may reasonably be suspected of being indecent articles and  
to produce by means of any suitable apparatus (whether found  
on the premises or not) a sound or picture from any record  
10 found in or on the premises.

(2) In the execution of a special warrant issued under  
subsection (1), a member of the police force may take with  
him such assistants as he thinks necessary and may, by  
breaking down doors or otherwise, use, or authorise his  
15 assistants to use, force in gaining the entry authorised by the  
special warrant.

7. (1) Where an article has been seized pursuant to a  
special warrant issued under section 6 (1), it shall be returned  
to the premises in or on which it was seized unless, not later  
20 than one month after the seizure, an information is laid  
against a person for a contravention of section 5 with respect  
to the article (or an article of which it is a copy) or a  
member of the police force reports the seizure to a justice  
who shall thereupon issue his summons calling on the person  
25 who, at the time of the seizure of the article, was occupying  
or using the premises entered by virtue of the warrant to  
appear before a court of petty sessions constituted by a  
stipendiary magistrate to show cause why the article and  
any other article seized pursuant to the warrant should not  
30 be forfeited to Her Majesty.

Summons to  
show cause  
against  
forfeiture  
of article  
may issue.

(2)



*Indecent and Restricted Publications.*

(2) Where a summons issues under subsection (1) with respect to any articles, the court before which it is returned may order that there be forfeited to Her Majesty—

- 5 (a) such of the articles as are not claimed by the person summoned, or by some other person; or
- (b) where the person summoned, or some other person, claims any of the articles—such of the articles claimed as are found by the court to be indecent.

10 **8.** (1) A member of the police force may seize any article that is in a public place if it may reasonably be suspected of being an indecent article. Suspected indecent article in public place.

(2) A member of the police force who seizes an article under subsection (1) shall take it to a police station and shall, unless he brings a person before a stipendiary magistrate charged with a contravention of section 5 with respect to the article, report the seizure in writing to a court of petty sessions.

20 (3) Where any article is seized under subsection (1), a court of petty sessions constituted by a stipendiary magistrate may, unless the article has been forfeited pursuant to section 5 (2), order that the article be forfeited to Her Majesty if—

- 25 (a) within the period of six months that next succeeds the seizure of the article no person applies to take possession of the article; or
- (b) a person applies within that period to take possession of the article and the court finds that the article is indecent.



*Indecent and Restricted Publications.*

9. Where an article is seized pursuant to a special warrant issued under section 6 (1) or pursuant to section 8 (1), a court of petty sessions may order the return of the article to the person who appears to be lawfully entitled to possession thereof if the court finds that the article, or an article of which it is a copy, is not indecent—

Return of  
seized  
article.

- (a) at the hearing and determination of an information for a contravention of section 5 with respect to the article; or
- 10 (b) where the article has not been forfeited pursuant to section 5 (2)—
- (i) on the return of a summons issued pursuant to section 7 (1); or
- 15 (ii) on an application referred to in section 8 (3) (b).

10. (1) This section applies to a business an object of which is the sale or disposal of any article, material, compound, preparation, device or other thing (whether of the same or of a different kind or nature) that is primarily concerned with, or is used or intended to be used in connection with, sexual behaviour but is not printed matter.

Offences  
relating to  
certain  
type of  
business.

(2) A person other than a corporation contravenes this section if he carries on or manages a business to which this section applies and he advertises, or attempts to advertise, or counsels or procures a person to advertise, in any manner the nature of the object of his business referred to in subsection (1).

(3) A corporation contravenes this section if—

30 (a) it carries on or manages a business to which this section applies; and

(b) the corporation, or a director, secretary or employee of the corporation, advertises, or attempts to advertise, or counsels or procures a person to advertise, in any manner the nature of the object of its business referred to in subsection (1).

35

(4)



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*Indecent and Restricted Publications.*

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(4) For the purposes of subsections (2) and (3), it is not an advertisement of the nature of an object of a business to which this section applies to make the object known only to a person, or the servant or agent of a person, who carries on a business or undertaking, or practises a profession, that ordinarily involves selling or disposing of, or advising on or prescribing the use of, any article, material, compound, preparation or device referred to in subsection (1).

(5) A person contravenes this section if, in or in connection with the carrying on of a business to which this section applies, he exhibits or displays in a manner visible from a public place, or visible to a person who has not consented to or requested the exhibition or display, any article, material, compound, preparation, device or other thing referred to in subsection (1).

Penalty : In the case of a corporation—\$1,000 for a first offence and \$2,000 for a second or subsequent offence. In any other case—\$500 or imprisonment for six months for a first offence or \$1,000 or imprisonment for twelve months for a second or subsequent offence.

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PART III.

RESTRICTED PUBLICATIONS.

11. In this Part—

Interpreta-  
tion of Part.

25 “restricted publication” means—

- (a) a publication classified by the Minister under section 14 as a restricted publication ;
- (b) a publication that is within a class of publication classified by the Minister under section 14 as a restricted class of publication ;

“publication”



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*Indecent and Restricted Publications.*

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5 “publication” means book, paper, newspaper, pamphlet, magazine, periodical, letterpress or printed matter, or any part thereof, and any writing, print, picture, photograph, lithograph, drawing or representation, or any part thereof.

12. (1) The Governor may appoint a State Advisory Committee on Publications consisting of not less than three, and not more than seven, persons who shall have and may exercise and perform the powers, authorities, duties and functions conferred or imposed on the Committee by or under this Act. State Advisory Committee on Publications.

(2) Of the members of the Committee—

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

(3) Of the members of the Committee, one shall, by the instrument of his appointment as a member of the Committee or by a separate instrument, be appointed as the chairman of the Committee and another shall, in like manner, 20 be appointed as deputy chairman of the Committee.

(4) A person who is of or above the age of sixty-five years is not eligible for appointment as a member of the Committee.

25 (5) Subject to this section and section 25, a member of the Committee holds office for a period of five years but is eligible for reappointment.

(6)



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*Indecent and Restricted Publications.*

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(6) A member of the Committee vacates his office if he—

- (a) dies;
- 5 (b) becomes a bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes any assignment of his estate for their benefit;
- 10 (c) within the meaning of the Mental Health Act, 1958, becomes a temporary patient, a continued treatment patient, a protected person or an incapable person, or if he becomes a person under detention within the meaning of Part VII of that Act;
- (d) resigns his office by writing under his hand addressed to the Minister;
- 15 (e) attains the age of sixty-five years;
- (f) is removed from office by the Governor.

(7) Where a vacancy occurs in the office of a member of the Committee otherwise than by reason of the expiration of his term of office, the Governor may, subject to subsection 20 (2), appoint a person to the vacant office for the residue of the term of office of his predecessor.

(8) A member of the Committee is entitled to remuneration and expenses at rates from time to time fixed by the Governor.

25 (9) Meetings of the Committee shall be convened by the chairman and shall be so convened at such times as the chairman thinks fit and whenever he is requested so to do by the Minister.

(10) A majority of the members of the Committee 30 constitutes a quorum for the purposes of a meeting of the Committee.



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*Indecent and Restricted Publications.*

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(11) The powers, authorities, duties and functions conferred or imposed upon the Committee may only be exercised or performed by the majority decision of the members of the Committee present and voting at a duly convened  
5 meeting of the Committee at which a quorum is present.

(12) If, at a meeting of the Committee the voting on any matter is equal, the chairman is entitled to a casting vote in addition to his deliberative vote.

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

(14) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment by the  
15 Governor of a member of the Committee and any such member is not, in his capacity as such a member, subject to those provisions.

(15) The office of a member of the Committee is not, for the purposes of the Constitution Act, 1902, an office  
20 of profit under the Crown.

**13.** (1) Where the Minister refers a publication or class of publication to the Committee for its report, the Committee shall report to the Minister whether or not, in the opinion of the Committee, the publication or class of publication—

Powers and  
functions of  
Committee.

25 (a) has any merit in the field of literature, art, medicine or science;

(b) is, by reason of the nature or extent of references therein to matters of sex, drug addiction, horror, crime, cruelty or violence, or for any other reason,  
30 undesirable reading for persons under the age of eighteen years and should be classified as a restricted publication or class of publication; or

(c) should be the subject of an order under section 19.

(2)



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*Indecent and Restricted Publications.*

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(2) The Committee shall report to the Minister on any matter arising out of the administration of this Act that is referred to it by the Minister.

5 (3) Where the Committee is obliged under this section to make a report on a publication or class of publication or on any other matter, a member of the Committee who was, or was part of, the minority when the decision to make the report was made may himself make a report to the Minister.

10 **14.** (1) After considering a report made to him under section 13 the Minister may, by order published in the Gazette, classify a publication as a restricted publication or a class of publication as a restricted class of publication. Restricted publications.

(2) Where the Minister so specifies in an order under 15 subsection (1), any subsequent edition, series, number or issue of the publication or class of publication to which the order relates is a restricted publication or class of restricted publication notwithstanding any reconstruction (whether by 20 way of alteration in title, change of subject, characters, story or other features or otherwise howsoever) of the publication or class of publication.

(3) The publication of an order under subsection (1) is evidence that all conditions precedent to its making have been complied with.

25 **15.** (1) A person contravenes this section if, in a street or public place (not being a shop)— Offences in relation to restricted publications.

(a) he distributes, disseminates, circulates, exhibits, displays, lends, sells, offers for sale, lets on hire, or offers to let on hire, a restricted publication; or

30 (b) he has a restricted publication in his possession apparently for the purpose of doing an act referred to in paragraph (a) in a street or public place (not being a shop).

(2)



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*Indecent and Restricted Publications.*

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(2) A person contravenes this section if he exhibits a restricted publication to public view in the window or doorway of a shop.

(3) Subject to subsection (4), a person contravenes  
5 this section if, in a shop—

(a) he displays or exhibits a restricted publication to public view; or

(b) he renders a restricted publication readily accessible to the public.

10 (4) It is not a contravention of this section to display or exhibit a restricted publication in a shop, or render a restricted publication readily accessible in a shop, if it is displayed, exhibited or rendered accessible only to persons of or above the age of eighteen years.

15 (5) A person contravenes this section if, in a street or public place (including a shop), he publishes any advertising material of such a nature that another person may thereby be informed—

(a) that a publication is a restricted publication; or

20 (b) that an identifiable place or person may be resorted to for the purpose of perusing or obtaining a publication referred to in that advertising material in such a manner as to convey that it is a restricted publication,

25 unless the publishing 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.

(6) A person contravenes this section if he sells,  
30 offers for sale, lets on hire or offers to let on hire, to a person under the age of eighteen years, a restricted publication.

(7)



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*Indecent and Restricted Publications.*

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(7) A person contravenes this section if he sends or delivers a restricted publication, or any advertising material referred to in subsection (5), to a building or any land used in connection therewith (whether or not the building or land is in the State) unless—

- (a) it is sent or delivered at the request of an occupier of the building or land who is of or over the age of eighteen years; and
- (b) it is sent or delivered in such a manner as not to be displayed to, or receivable by, a person other than that occupier.

(8) Where a person has been convicted of an offence against this Act constituted by a contravention of this section, or where in respect of any person such an offence has been found by a court to have been proved, there shall be forfeited to Her Majesty—

- (a) in the case of a contravention referred to in subsection (1) or (6)—all restricted publications found at the time of commission of the offence in the possession or apparently under the control of that person;
- (b) in the case of a contravention referred to in subsection (2) or (3)—all restricted publications that, at the time of the commission of the offence were displayed, exhibited or rendered accessible, in the manner so referred to, in the shop, or in the window or doorway of the shop, involved in the commission of the offence;
- (c) in the case of a contravention referred to in subsection (5)—all advertising material of the nature so referred to found, at the time of the commission of the offence, in the possession or apparently under the control of that person.



*Indecent and Restricted Publications.*

(9) It is a defence to a prosecution for a contravention referred to in subsection (3) if it is proved—

- 5 (a) that the defendant took all such steps as could reasonably have been taken to avoid committing the offence; or
- 10 (b) that he, or his servant or agent, in displaying or exhibiting the publication involved to a person under the age of eighteen years, or in rendering it readily accessible to such a person, had reasonable grounds for believing, and did believe, that person to be of or over that age.

(10) It is a defence to a prosecution for a contravention referred to in subsection (6) if it is proved that the defendant had reasonable grounds for believing, and did believe, that the person to whom the publication involved was sold, let on hire or offered was of or over the age of eighteen years.

Penalty : In the case of a corporation—\$500 for a first offence and \$1,000 for a second or subsequent offence. In any other case—\$250 or imprisonment for three months for a first offence and \$500 or imprisonment for six months for a second or subsequent offence.

**16.** (1) Where a member of the police force has reasonable cause to suspect that a person in a street or public place (including a shop) who is in possession of a restricted publication is under the age of eighteen years, he may require that person to state his correct age, name and address and, if the member of the police force has reasonable cause to suspect that the age, name or address stated is false, he may require that person to produce, within a reasonable time, evidence of the correctness of the age, name or address stated.

Member of the police force may require certain particulars.

(2) A person contravenes this section if he fails or refuses to comply with a requirement referred to in subsection (1).

35 Penalty : \$100.



*Indecent and Restricted Publications.*

17. Nothing in this Part shall be construed as exempting from the operation of Part II a restricted publication that is an indecent article.

Restricted publication may be indecent article.

PART IV.

GENERAL.

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18. Where a corporation commits an offence against this Act, a person who, at the time of the commission of the offence, was within the meaning of the Companies Act, 1961, a director of, or was a person concerned in the management of, the corporation is, without affecting the liability of the corporation to be punished for the offence, guilty of the same offence and liable to the penalty or imprisonment prescribed in the case of such an offence by a person other than a corporation unless he satisfies the court that the offence was committed by the corporation without his knowledge or that he used all due diligence to prevent the commission of the offence by the corporation.

Liability of directors, etc., where offence committed by corporation.

19. Where the Minister, by order published in the Gazette, directs on the advice of the Committee that a specified book, magazine or periodical is not to be the subject of proceedings for a contravention of section 5 and is exempt from seizure pursuant to section 6 or 8 no such proceedings shall be instituted, and no such seizure is lawful, while the order remains in force.

Certain publications not to give rise to certain proceedings.

20. (1) Proceedings for a contravention of a provision of this Act (sections 15 and 16 excepted) in respect of a book, magazine or periodical may be instituted only with the prior approval of the Minister.

No proceedings without approval of Minister.



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*Indecent and Restricted Publications.*

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(2) The Minister may give an approval under subsection (1) in respect of a specified book, magazine or periodical without specifying the contravention or any party to the proceedings.

5 (3) A document that—

(a) purports to signify that the approval of a Minister of the Crown to the institution of proceedings for a contravention of a provision of this Act in respect of a specified book, magazine or periodical was  
10 given on a specified date; and

(b) bears a signature purporting to be the signature of a Minister of the Crown.

is, without proof of the signature or of the official character of the signatory, evidence of the approval purporting to be  
15 signified by the document and conclusive evidence that the approval was given by the Minister referred to in subsection (1).

**21.** Proceedings for a contravention of a provision of this Act shall be heard and determined by a stipendiary magistrate  
20 sitting in petty sessions.

Proceedings under Act to be before stipendiary magistrate.

**22.** In any proceedings under this Act—

(a) the opinion of an expert as to whether or not an article has any merit in the field of literature, art, medicine or science and, if so, the nature and extent thereof is admissible evidence; and  
25

Admissibility of certain evidence.

(b) evidence directed towards establishing contemporary community standards of decency is not admissible.

**23.** Notwithstanding anything in any contract or agreement entered into before or after the commencement of this  
30 Act, a distributor, bookseller, newsagent or other person is not liable for breach of contract by reason only of his rejecting

Exoneration from liability under certain contracts.

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*Indecent and Restricted Publications.*

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an article that is delivered to him, or by reason only of his refusing to accept delivery of or to deal in any such article, where—

- 5 (a) the article is a restricted publication within the meaning of Part III, or that person reasonably and bona fide believes that his acceptance of delivery of, or his possession of, or his dealing in, the article may render him liable to be prosecuted for publishing an obscene or blasphemous libel or for any  
10 offence against this Act; and
- (b) he gives to the person from whom he has received, or is to receive, delivery of the article notice in writing of his rejection thereof, or refusal to accept delivery thereof, or to deal therein, and of the reason  
15 therefor, as soon as practicable after he becomes aware of the nature of the article.

24. (1) Proceedings in respect of any damage or injury may not be instituted or maintained against any person in respect of anything done or omitted pursuant to this Act or  
20 in the exercise or performance of a power, authority, duty or function conferred or imposed by this Act until the expiration of the period of one month that next succeeds the giving to that person of a notice specifying—

- (a) the cause of action; Notice of action.
- 25 (b) the time and place at which the damage or injury was sustained; and
- (c) the name and place of abode or business of the intended plaintiff and of his attorney, if any.

(2) Where a notice referred to in subsection (1) is  
30 given in relation to a cause of action arising out of damage to property, the intended plaintiff shall permit a person authorised

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by the Minister to inspect the property damaged and shall give that person such facilities and information as are necessary to enable the value of the property damaged, and the amount of money, if any, expended in repairing the damage, to be ascertained.

(3) At the hearing of any proceedings referred to in subsection (1) the plaintiff may not adduce evidence of any cause of action not stated in the notice he is required to give under subsection (1) but, at any stage of the proceedings the court concerned may if it considers it to be just and reasonable so to do—

- (a) permit the amendment of any defect in the notice on such terms and conditions as it thinks fit; or
- (b) permit the proceedings to be maintained notwithstanding any non-compliance, or insufficient compliance, with the provisions of this section.

(4) Proceedings referred to in subsection (1) may not be commenced after the expiration of the period of three months next after the cause of action arises but, where application for an extension of the period in which the proceedings may be instituted is made to a court in which the proceedings, if lawful, may be instituted and maintained, that court may, for sufficient cause shown or if it considers it reasonable in the circumstances so to do, grant an extension of that period on such terms and conditions, if any, as it thinks fit.

(5) Application for an extension of time under subsection (4) may not be made later than six months after the cause of action arises.

(6) A person to whom a notice is given under subsection (1) may, at any time within one month after service of the notice, tender to the plaintiff or intended plaintiff, or to his agent or attorney, sufficient amends and, if the tender is not accepted, may plead the tender as a defence.

(7)



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(7) Proceedings may not be instituted or maintained by or in favour of any person against the Board or the Committee, or any member of the Board or Committee, or any other person acting under the direction of the Board or 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.

25 **25.** (1) A person who, immediately before the commencement of this Act, held office as a member, or as chairman, or as deputy chairman, of the State Advisory Committee on Publications as then constituted continues in office on and after that commencement as if he had been appointed as such under section 12 to hold office, subject to this Act, for the residue of the term of office for which he had been appointed under the Acts repealed by this Act.

Savings and transitional provisions.

(2) Where any thing was seized or attached before the commencement of this Act pursuant to a power conferred by the Acts repealed by this Act, the provisions of the Acts so repealed continue to apply to and in respect of the thing seized or attached as if this Act had not been enacted.

(3) Where—

25 (a) before the commencement of this Act the Minister referred for the consideration of the State Advisory Committee on Publications a publication or class of publication or a matter arising out of the administration of the Acts repealed by this Act; or

30 (b) before or after that commencement the Minister received or receives a report by that Committee on a publication, class of publication or matter that, before that commencement, was referred to it for consideration,

the reference or report, as the case may be, shall be deemed to be a reference or report pursuant to section 13.

(4)



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(4) To the extent that a determination by the Minister under the Acts repealed by this Act with respect to a restricted publication or a restricted class of publication is in force immediately before that commencement, the publication  
5 or class of publication shall, in relation to any thing done or omitted to be done after that commencement, be deemed to have been classified by the Minister, by an order under section 14 published at the commencement of this Act, as a restricted publication or, as the case may be, as a restricted  
10 class of publication.

(5) Where a book, magazine or periodical was the subject of a determination by the Minister in force immediately before the commencement of this Act having the effect of forbidding the institution of proceedings under a provision  
15 of the Acts repealed by this Act in respect of the book, magazine or periodical, the Minister shall be deemed to have directed, by an order under section 19 published at that commencement, that the book, magazine or periodical—

(a) is not to be the subject of proceedings for a  
20 contravention of section 5; and

(b) is exempt from seizure under section 6 or 8.

(6) Section 20 applies, in respect of an approval given by the Minister before the commencement of this Act, as if that section had been in force at the time the  
25 approval was given.

(7) Nothing in this section affects any saving effected by the Interpretation Act, 1897.

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SCHEDULE.



*Indecent and Restricted Publications.*

## SCHEDULE.

Sec. 2.

Citation.	Short title.	Extent of repeal.
No. 12, 1901 ..	Obscene and Indecent Publications Act 1901.	The whole Act.
5 No. 12, 1908 ..	Police Offences (Amendment) Act, 1908.	Part V.
No. 36, 1946 ..	Obscene and Indecent Publications (Amendment) Act, 1946.	The whole Act.
10 No. 10, 1955 ..	Obscene and Indecent Publications (Amendment) Act, 1955.	The whole Act.
No. 54, 1967 ..	Obscene and Indecent Publications (Amendment) Act, 1967.	The whole Act.
No. 26, 1968 ..	Obscene and Indecent Publications (Amendment) Act, 1968.	The whole Act.

BY AUTHORITY

V. C. N. BLIGHT, C.B.E., GOVERNMENT PRINTER, NEW SOUTH WALES—1973

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