

INDECENT ARTICLES AND CLASSIFIED PUBLICATIONS BILL.

*Schedule of the Amendment referred to in Legislative Council's
Message of 19 March, 1975.*

No. 1.—Page 8, clause 8, line 27. *After “unless” insert “, not later than one month
after the seizure,”.*

Faint, illegible text, possibly bleed-through from the reverse side of the page.

Faint, illegible text, possibly bleed-through from the reverse side of the page.

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.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 13 March, 1975.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with an Amendment.

A. W. SAXON,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 19 March, 1975.*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. , 1975.

An Act with respect to the maintenance of standards of decency in the circulation and display of publications and certain other articles; to repeal the Obscene and Indecent Publications Act 1901; and for purposes connected therewith.

BE

80881 279—A

NOTE.—The words to be *inserted* are printed in **black letter**.

Indecent Articles and Classified Publications.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Indecent Articles and Classified Publications Act, 1975".

Short title.

2. (1) Section 1 and this section commence on the date of assent to this Act.

Commencement.

(2) Subject to subsection (1), this Act commences on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

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 The Acts specified in the Schedule are, to the extent so specified, hereby repealed.

Division of Act.

4. This Act is divided, as follows :—

PART I.—PRELIMINARY—ss. 1–5.

20 PART II.—INDECENT ARTICLES—ss. 6–10.

PART III.—CLASSIFIED PUBLICATIONS—ss. 11–21.

PART IV.—GENERAL—ss. 22–30.

SCHEDULE.

5.

Indecent Articles and Classified Publications.

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

“appointed day” means the day appointed and notified under section 2 (2);

5 “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

10 (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);

15 “Board” means the Publications Classification Board constituted under section 15;

“classification officer” means a person designated as a classification officer under section 11;

20 “classified publication” means an unrestricted publication, a restricted publication or a direct sale publication;

“classifying authority” means a classification officer, the Board or the District Court;

“direct sale publication” means—

25 (a) a publication in respect of which a classification under section 13 as a direct sale publication is in force; or

(b) a copy of such a publication;

“District

Indecent Articles and Classified Publications.

“District Court” means the District Court of New South Wales;

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

“publication” means a book, newspaper, magazine, periodical or like printed matter;

“publish” includes—

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

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

20 (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;

25 “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;

“restricted publication” means—

30 (a) a publication in respect of which a classification under section 13 as a restricted publication is in force; or

(b) a copy of such a publication;

“unrestricted

Indecent Articles and Classified Publications.

“unrestricted publication” means—

- (a) a publication in respect of which a classification under section 13 as an unrestricted publication is in force; or
- 5 (b) a copy of such a publication.

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

- 10 (a) a person publishes a positive or negative photograph if he publishes a positive or negative picture made from it in a form visible by reflected or transmitted light or if he makes it available for use in making such a picture;
- 15 (b) a person publishes a record if he publishes the sound or picture recorded thereon, whether or not he publishes it in a distorted or altered form; and
- 20 (c) a person in the State, or who is resident in the State, publishes an article notwithstanding that the person to whom, or the place at which, he publishes the article is not within the State.

(3) 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.

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

(5)

Indecent Articles and Classified Publications.

5 (5) For the purposes of this Act, a person shall be deemed to have published an article in a street or public place if either he or the person to whom he publishes the article is, at the time of the publishing, in the street or public place.

PART II.

INDECENT ARTICLES.

6. (1) Subject to section 25, a person who publishes an indecent article contravenes this section and is liable, on 10 conviction on indictment—

(a) where the accused is a corporation—to a penalty not exceeding—

(i) \$2,000 for a first offence; or

(ii) \$4,000 for a second or subsequent offence;

15 **or**

(b) where the accused is not a corporation—to a penalty not exceeding—

(i) \$1,000 or imprisonment for twelve months for a first offence; or

20 (ii) \$2,000 or imprisonment for two years for a second or subsequent offence.

(2) Where—

(a) a person is charged before a stipendiary magistrate or two justices with a contravention of this section;

25 (b) the evidence for the prosecution is, in the opinion of the magistrate or justices, sufficient to put the accused on his trial;

(c)

Indecent Articles and Classified Publications.

- (c) it appears to the magistrate or justices that the case may properly be disposed of summarily; and
- (d) the accused consents to the case being disposed of summarily and does not desire to have the case determined by a jury,
- 5 the magistrate or justices may hear and determine the charge in a summary manner.

(3) The provisions of sections 479, 480 and 481 of the Crimes Act 1900 apply to and in respect of a case 10 disposed of in accordance with subsection (2) in the same way as they apply to and in respect of a case disposed of in accordance with section 476 of that Act.

(4) A person convicted summarily in accordance with subsections (2) and (3) is liable—

- 15 (a) where the accused is a corporation—to a penalty not exceeding—
- (i) \$1,000 for a first offence; or
 - (ii) \$2,000 for a second or subsequent offence; or
- 20 (b) where the accused is not a corporation—to a penalty not exceeding—
- (i) \$500 or imprisonment for six months for a first offence; or
 - (ii) \$1,000 or imprisonment for twelve months for a second or subsequent offence.
- 25

Indecent Articles and Classified Publications.

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

Special warrant to search for and seize certain indecent articles.

- 5 (a) that an article (not being a publication) 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) that such an article has been published in, on or from specified premises,

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

(2) In the execution of a special warrant issued under
20 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 assistants to use, force in gaining the entry authorised by the special warrant.

25 8. (1) Where an article has been seized pursuant to a special warrant issued under section 7 (1), it shall be returned to the premises in or on which it was seized unless, **not later than one month after the seizure**, an information is laid against a person for a contravention of section 6 with respect
30 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 who, at the time of the seizure of the article, was occupying or using

Summons to show cause against forfeiture of article may issue.

the

Indecent Articles and Classified Publications.

the premises entered by virtue of the warrant to appear before a court of petty sessions to show cause why the article and any other article seized pursuant to the warrant should not be forfeited to Her Majesty.

5 (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—

(a) such of the articles as are not claimed by the person summoned, or by some other person; or

10 (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.

9. A court of petty sessions shall order the return of an article seized pursuant to a warrant issued under section 7
 15 (1)— Return of seized article.

(a) if the court dismisses an information laid for a contravention of section 6 with respect to the article; or

20 (b) if, on the return before it of a summons issued pursuant to section 8 (1) with respect to the article, it finds that the article is not indecent.

10. (1) This section applies to a business (other than a prescribed business, or a business of a prescribed class, in respect of which the prescribed conditions are complied with) Offences relating to certain type of business.
 25 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.

(2)

Indecent Articles and Classified Publications.

(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
5 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
- 10 (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).

15 (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 pro-
20 fession, that ordinarily involves selling or disposing of, or advising on or prescribing the use of, any article, material, compound, preparation, device or other thing referred to in subsection (1).

(5) A person contravenes this section if, in or in
25 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
30 referred to in subsection (1).

Penalty

Indecent Articles and Classified Publications.

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.

PART III.

CLASSIFIED PUBLICATIONS.

11. The Minister may, by order published in the Gazette— Classification officers.

10 (a) designate—

(i) the holder for the time being of a specified office, being an office tenable only by a person appointed or employed under the Public Service Act, 1902; or

15 (ii) a person so appointed or employed; or

(b) with the consent of a Minister of State for the Commonwealth, designate—

(i) the holder for the time being of a specified office, not being an office so tenable; or

20 (ii) a person not appointed or employed under that Act,

as a classification officer for the purposes of this Act.

12. (1) The Minister or a person authorised by him may apply to a classification officer for the classification of any publication. Application for classification.

Indecent Articles and Classified Publications.

(2) A person who proposes to publish a publication may apply to a classification officer for the classification of that publication.

5 (3) Where a classification officer classifies a publication pursuant to an application under subsection (1) or (2) and the applicant objects to the classification, the applicant may, not later than seven days after the classification takes effect, apply to the Board for classification of the publication.

10 (4) Where the Board classifies a publication pursuant to an application made under subsection (3) otherwise than by the Minister or a person authorised by him and the applicant objects to the classification, the applicant may, not later than seven days after the classification takes effect apply to the District Court, in accordance with rules of court, for
15 classification of the publication.

(5) Where a classification officer classifies a publication pursuant to an application under subsection (2) and the Minister objects to the classification, the Minister or a person authorised by him may apply at any time to the Board for
20 classification of the publication.

(6) Where a publication has been classified under section 13, an application, or further application, may not be made under subsection (2) in respect of the publication.

25 (7) Where a person requests the Minister to apply under subsection (1) for a further classification of a classified publication and, upon the application of the Minister, the publication is again classified, that application by the Minister shall, notwithstanding subsection (6), be deemed, for the purposes of subsections (3), (4) and (5), to have been duly
30 made by that person under subsection (2).

(8)

Indecent Articles and Classified Publications.

(8) The making of an application under this section does not affect any classification of a publication that—

- (a) is in force when the application is made; or
- (b) takes effect after the application is made and before the classification pursuant to the application takes effect.

13. (1) Where a publication is the subject of an application under section 12 to a classifying authority, the authority may—

- (a) classify the publication as an unrestricted publication; or
- (b) having regard—
 - (i) to the manner in which, and the extent to which, the publication relates to or depicts matters of sex, drug addiction, horror, crime, cruelty or violence; and
 - (ii) to the provisions of sections 17, 18 and 19, classify the publication as a restricted publication or a direct sale publication.

(2) If a classifying authority so directs when classifying a publication, the classification decided upon extends to any subsequent edition, series, number, instalment or issue of the publication notwithstanding any reconstruction (whether by way of alteration in title, change of subject, characters, story or other features, or in any other manner) of the publication.

14. (1) Where the Minister receives notice of a classification under section 13 (1), or of a direction under section 13 (2), with respect to a publication, he shall cause the classification or direction to be notified in the Gazette.

(2)

Indecent Articles and Classified Publications.

(2) Neither a classification of a publication under section 13 (1) nor a direction given under section 13 (2) has effect until it is notified under subsection (1).

(3) A notification in the Gazette that purports to be
5 a notification under subsection (1)—

- (a) is evidence that a publication specified therein has been classified under section 13 as is specified in the notification;
- 10 (b) is evidence that a direction specified therein with respect to a publication has been given with respect to the publication;
- (c) is evidence that any classification or direction specified therein is in force; and
- 15 (d) revokes any earlier such notification to the extent of any inconsistency.

(4) Where, but for this subsection, two classifications of a publication would take effect on the same day—

- 20 (a) a classification by the Board shall be deemed to take effect later than a classification by a classification officer; and
- (b) a classification by the District Court shall be deemed to take effect later than a classification by the Board.

15 25 **15.** (1) The Governor may appoint a Publications Classification Board consisting of not less than five, 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 Board by or under this Act.

(2)

Indecent Articles and Classified Publications.

(2) Of the members of the Board—

(a) one shall be a recognised expert in literature, art, medicine or science; and

(b) one shall be a barrister or solicitor,

5 and, of the other members of the Board, one at least shall be a man and one at least shall be a woman.

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

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

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

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

(a) dies;

20 (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;

25 (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)

Indecent Articles and Classified Publications.

- (d) resigns his office by writing under his hand addressed to the Minister;
- (e) attains the age of sixty-five years; or
- (f) is removed from office by the Governor.

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

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

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

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

20 (11) The powers, authorities, duties and functions conferred or imposed upon the Board may only be exercised or performed pursuant to a decision supported by a majority of votes at a duly convened meeting of the Board at which a quorum is present.

25 (12) If, at a meeting of the Board, 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
30 chairman may exercise and perform the powers, authorities, duties and functions conferred and imposed on the chairman by this Act.

(14)

Indecent Articles and Classified Publications.

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

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

16. (1) The Board shall report to the Minister on any matter arising out of the administration of this Act that is referred to it by the Minister. Board to make certain reports to Minister.

(2) Where the Board is obliged under this section to make a report on any matter, a member of the Board who was, or was part of, the minority when the decision to make
15 the report was made may himself make a report to the Minister.

17. (1) A person contravenes this section if, in a street or public place (not being a shop)—

- (a) he publishes a restricted publication; or
20 (b) he has a restricted publication in his possession apparently for the purpose of publishing it in a street or public place (not being a shop).

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

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

- (a) in a part of a shop that is not its window or entrance recess, he displays or exhibits a restricted
30 publication to public view; or

Indecent Articles and Classified Publications.

(b) in any part of a shop (including its window or entrance recess) he renders a restricted publication readily accessible to the public.

(4) Subject to subsection (5), it is a defence to a prosecution for a contravention of this section if it is proved that the defendant took all such steps as could reasonably have been taken to prevent any restricted publication being exhibited, displayed or rendered accessible in the part of the shop to which the charge relates to any person under the age of eighteen years.

(5) Subsection (4) does not apply where a restricted publication was displayed, exhibited or rendered accessible to a person under the age of eighteen years unless it is also proved that the person by whom the publication was displayed, exhibited or rendered accessible had reasonable grounds for believing, and did believe, that the person under that age was of or above that age.

(6) A person contravenes this section if he sells, 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) It is a defence to a prosecution for a contravention of this section 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 he sold, hired or offered the restricted publication the subject of the charge was of or above 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.

Indecent Articles and Classified Publications.

18. (1) A person contravenes this section if, in any part of a shop (including its window and any entrance recess), he displays or exhibits a direct sale publication to public view or renders a direct sale publication readily accessible to the public.

Offences in relation to direct sale publications.

(2) Except as provided by subsection (3), a person contravenes this section if he publishes a direct sale publication unless—

10 (a) the act that constitutes publishing is a sale or letting on hire of a single copy of the publication effected—

(i) in a shop pursuant to an unsolicited request made by the purchaser or hirer present in the shop when the request is made; or

15 (ii) if the regulations so provide, otherwise than in a shop, street or public place,

in such manner, and in compliance with such conditions, as may be prescribed;

(b) the publishing is a publishing to one person only; and

20 (c) the person to whom the publication is published is, at the time of the publication, of or above the age of eighteen years.

(3) A person who publishes a direct sale publication does not contravene this section if he is of or above the age of 25 eighteen years and he publishes the publication in the ordinary course of business for the purpose of giving possession thereof to—

(a) another person of or above that age whose business is or includes the publishing of publications; or

30 (b) a servant or agent, of or above that age, of that other person,

for use in the business of that other person in so far as that business includes the publishing of publications.

(4)

Indecent Articles and Classified Publications.

(4) Regulations made for the purposes of subsection (2) (a) may be made to differ in their application according to whether a sale or hiring takes place in a shop or elsewhere and according to such other matters as are specified in the regulations.

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.

19. (1) A person contravenes this section if, except to the extent provided by section 14 and the regulations, he publishes any advertising material of such a nature that a person may thereby be informed, whether by implication or otherwise—

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

(b) that an identifiable place or person may be resorted to for the purpose of perusing or obtaining a restricted or direct sale publication, whether or not the publication is identifiable.

(2) Regulations made for the purposes of subsection (1) may be made to differ in their application according to whether a publication is a restricted publication or a direct sale publication and according to such other matters as are specified in the regulations.

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.

Indecent Articles and Classified Publications.

20. Where a person has been convicted of an offence against this Act constituted by a contravention of section 17, 18 or 19 or where in respect of any person such an offence has been found by a court to have been proved, there shall
 5 be forfeited to Her Majesty—

Forfeiture
of certain
publications.

- (a) where the contravention involved a restricted publication—all restricted publications that were;
or
- 10 (b) where the contravention involved a direct sale publication—all direct sale publications that were;
or
- (c) where the contravention involved advertising material—all advertising material of the nature referred to in section 19 that was,

15 at the time of the commission of the offence in the possession or apparently under the control of that person.

21. (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
 20 publication or a direct sale 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
 25 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).

30 Penalty: \$100.

PART

Indecent Articles and Classified Publications.

PART IV.

GENERAL.

22. Where a corporation contravenes a provision of this Act, a person who, at the time of the contravention, was within the meaning of the Companies Act, 1961, a director of, or was a person concerned in the management of, the corporation shall, without affecting the liability of the corporation to be punished for the contravention, be deemed also to have contravened the provision and shall be liable to the penalty prescribed in the case of such a contravention by a person other than a corporation unless he satisfies the court that the provision was contravened by the corporation without his knowledge or that he used all due diligence to prevent the contravention by the corporation.

Liability of directors, etc., where provision contravened by corporation.

23. Except to the extent that this Act otherwise provides, proceedings for a contravention of a provision of this Act or the regulations, and proceedings on the return of a summons issued pursuant to section 8 (1), shall be heard and determined by a stipendiary magistrate sitting in petty sessions.

Proceedings to be before stipendiary magistrate, unless indictable.

24. In any proceedings in which indecency is in issue, 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.

Certain evidence may be admitted.

25. Proceedings may not be instituted against any person for publishing after the appointed day an obscene libel or an indecent article—

Certain proceedings prohibited.

(a) for the purposes of an application under section 12; or

(b) where the libel or article is, or is part of, a classified publication and that publication is not published in contravention of section 17, 18 or 19.

26.

Indecent Articles and Classified Publications.

26. Notwithstanding anything in any contract or agreement entered into before or after the appointed day, a distributor, bookseller, newsagent or other person is not liable for breach of contract by reason only of his rejecting 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
- Exoneration from liability under certain contracts.
- (a) the article is a restricted publication or a direct sale publication 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 contravention of a provision of 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.
- 15
27. (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—
- 20
- Notice of action.
- 25
- (a) the cause of action;
- (b) the time and place at which the damage or injury was sustained; and
- 30
- (c) the name and place of abode or business of the intended plaintiff and of his attorney, if any.

Indecent Articles and Classified Publications.

(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 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)

Indecent Articles and Classified Publications.

(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
5 is not accepted, may plead the tender as a defence.

(7) Proceedings may not be instituted or maintained by or in favour of any person against a classification officer or any member of the Board or any other person acting under the direction of the Board or a classification officer in respect
10 of any act done or omitted to be done bona fide in the execution of any power or authority conferred by this Act on the officer or the Board.

28. (1) Where any thing was seized or attached before the commencement of this Act pursuant to a power conferred
15 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.

Savings and transitional provisions.

(2) Where—

(a) before the appointed day the Minister referred for
20 the consideration of the State Advisory Committee on Publications constituted under the Acts repealed by this Act a matter arising out of the administration of the Acts repealed by this Act; or

(b) before or after that day the Minister received or
25 receives a report by that Committee on a matter that, before that day, 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 16.

Indecent Articles and Classified Publications.

(3) Where a notification in the Gazette under section 33 of the Obscene and Indecent Publications Act 1901 was in force immediately before the appointed day, the publication to which it relates shall, until a classification
5 of the publication pursuant to an application under section 12 (1) or (2) takes effect, be deemed to be a restricted publication.

(4) A notification in the Gazette that, immediately before the appointed day, was in force under section 35 of
10 the Obscene and Indecent Publications Act 1901 shall be deemed to be a notification, published on that day under section 14, classifying the publication to which it relates as an unrestricted publication pursuant to an application under section 12 (1).

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

29. The provisions of sections 6, 17, 18 and 19 do not apply to or in respect of—

Exemption
for certain
libraries.

20 (a) anything done in the execution of the Library of New South Wales Act, 1969; or

(b) a prescribed library, or a library of a prescribed class, in respect of which the prescribed conditions are complied with.

30. (1) The Governor may make regulations for or with
25 respect to all matters that by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.

(2)

Indecent Articles and Classified Publications.

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations for or with respect to—

- 5 (a) applications under section 12 (1), (2) and (5);
 (b) the marking of restricted or direct sale publications;
 (c) the wrapping of restricted or direct sale publications.

(3) The regulations may impose a penalty not exceeding \$500 for a contravention thereof.

SCHEDULE.

Sec. 3.

| 10 | Citation. | Short title. | Extent of repeal. |
|----|-----------------|--|-------------------|
| | No. 12, 1901 .. | Obscene and Indecent Publications Act 1901. | The whole Act. |
| | No. 12, 1908 .. | Police Offences (Amendment) Act, 1908. | Part V. |
| 15 | No. 36, 1946 .. | Obscene and Indecent Publications (Amendment) Act, 1946. | The whole Act. |
| | 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. |
| 20 | No. 26, 1968 .. | Obscene and Indecent Publications (Amendment) Act, 1968. | The whole Act. |

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975
[32c]

- whereof shall be a certain number of publications
- (1) the Commission may, in its discretion, exempt any publication from the provisions of this Act, if it is of a technical or scientific nature and is of a kind which is not generally available to the public;
- (2) the Commission may, in its discretion, exempt any publication from the provisions of this Act, if it is of a kind which is not generally available to the public and is of a kind which is not generally available to the public;
- (3) the Commission may, in its discretion, exempt any publication from the provisions of this Act, if it is of a kind which is not generally available to the public and is of a kind which is not generally available to the public;
- (4) the Commission may, in its discretion, exempt any publication from the provisions of this Act, if it is of a kind which is not generally available to the public and is of a kind which is not generally available to the public;
- (5) the Commission may, in its discretion, exempt any publication from the provisions of this Act, if it is of a kind which is not generally available to the public and is of a kind which is not generally available to the public;
- (6) the Commission may, in its discretion, exempt any publication from the provisions of this Act, if it is of a kind which is not generally available to the public and is of a kind which is not generally available to the public;
- (7) the Commission may, in its discretion, exempt any publication from the provisions of this Act, if it is of a kind which is not generally available to the public and is of a kind which is not generally available to the public;
- (8) the Commission may, in its discretion, exempt any publication from the provisions of this Act, if it is of a kind which is not generally available to the public and is of a kind which is not generally available to the public;
- (9) the Commission may, in its discretion, exempt any publication from the provisions of this Act, if it is of a kind which is not generally available to the public and is of a kind which is not generally available to the public;
- (10) the Commission may, in its discretion, exempt any publication from the provisions of this Act, if it is of a kind which is not generally available to the public and is of a kind which is not generally available to the public;

SCHEDULE

| Sl. No. | Description | Extent of application |
|------------------|--|-----------------------|
| 10 | Classical | |
| No. 12, 1901 | Opium and Tobacco Publications, The Opium Act, 1901 | |
| No. 15, 1907 | Police Officers (Amendment) Act, 1907 | |
| 13, No. 36, 1946 | Opium and Tobacco Publications, The Opium Act, (Amendment) Act, 1946 | |
| No. 16, 1952 | Opium and Tobacco Publications, The Opium Act, (Amendment) Act, 1952 | |
| No. 24, 1957 | Opium and Tobacco Publications, The Opium Act, (Amendment) Act, 1957 | |
| No. 36, 1968 | Opium and Tobacco Publications, The Opium Act, (Amendment) Act, 1968 | |

BY AUTHORITY
 SECRETARY TO GOVERNMENT
 DEPARTMENT OF REVENUE
 GOVERNMENT OF INDIA

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.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 13 March, 1975.*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. , 1975.

An Act with respect to the maintenance of standards of decency in the circulation and display of publications and certain other articles; to repeal the Obscene and Indecent Publications Act 1901; and for purposes connected therewith.

BE

Indecent Articles and Classified 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 :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Indecent Articles and Classified Publications Act, 1975". Short title.

10 2. (1) Section 1 and this section commence on the date of assent to this Act. Commencement.

(2) Subject to subsection (1), this Act commences on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in 15 the Gazette.

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

4. This Act is divided, as follows :— Division of Act.

PART I.—PRELIMINARY—ss. 1-5.

20 PART II.—INDECENT ARTICLES—ss. 6-10.

PART III.—CLASSIFIED PUBLICATIONS—ss. 11-21.

PART IV.—GENERAL—ss. 22-30.

SCHEDULE.

Indecent Articles and Classified Publications.

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

“appointed day” means the day appointed and notified under section 2 (2);

5 “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

10 (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);

15 “Board” means the Publications Classification Board constituted under section 15;

“classification officer” means a person designated as a classification officer under section 11;

20 “classified publication” means an unrestricted publication, a restricted publication or a direct sale publication;

“classifying authority” means a classification officer, the Board or the District Court;

“direct sale publication” means—

25 (a) a publication in respect of which a classification under section 13 as a direct sale publication is in force; or

(b) a copy of such a publication;

“District

Indecent Articles and Classified Publications.

“District Court” means the District Court of New South Wales;

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

“publication” means a book, newspaper, magazine, periodical or like printed matter;

“publish” includes—

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

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

20 (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;

25 “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;

“restricted publication” means—

30 (a) a publication in respect of which a classification under section 13 as a restricted publication is in force; or

(b) a copy of such a publication; “unrestricted

Indecent Articles and Classified Publications.

“unrestricted publication” means—

- (a) a publication in respect of which a classification under section 13 as an unrestricted publication is in force; or
- 5 (b) a copy of such a publication.

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

- 10 (a) a person publishes a positive or negative photograph if he publishes a positive or negative picture made from it in a form visible by reflected or transmitted light or if he makes it available for use in making such a picture;
- 15 (b) a person publishes a record if he publishes the sound or picture recorded thereon, whether or not he publishes it in a distorted or altered form; and
- 20 (c) a person in the State, or who is resident in the State, publishes an article notwithstanding that the person to whom, or the place at which, he publishes the article is not within the State.

(3) 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.

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

Indecent Articles and Classified Publications.

(5) For the purposes of this Act, a person shall be deemed to have published an article in a street or public place if either he or the person to whom he publishes the article is, at the time of the publishing, in the street or public place.

PART II.

INDECENT ARTICLES.

6. (1) Subject to section 25, a person who publishes an indecent article contravenes this section and is liable, on conviction on indictment—

Offence relating to publication of an indecent article.

(a) where the accused is a corporation—to a penalty not exceeding—

(i) \$2,000 for a first offence; or

(ii) \$4,000 for a second or subsequent offence;
or

(b) where the accused is not a corporation—to a penalty not exceeding—

(i) \$1,000 or imprisonment for twelve months for a first offence; or

(ii) \$2,000 or imprisonment for two years for a second or subsequent offence.

(2) Where—

(a) a person is charged before a stipendiary magistrate or two justices with a contravention of this section;

(b) the evidence for the prosecution is, in the opinion of the magistrate or justices, sufficient to put the accused on his trial;

(c)

Indecent Articles and Classified Publications.

(c) it appears to the magistrate or justices that the case may properly be disposed of summarily; and

5 (d) the accused consents to the case being disposed of summarily and does not desire to have the case determined by a jury,

the magistrate or justices may hear and determine the charge in a summary manner.

(3) The provisions of sections 479, 480 and 481 of the Crimes Act 1900 apply to and in respect of a case 10 disposed of in accordance with subsection (2) in the same way as they apply to and in respect of a case disposed of in accordance with section 476 of that Act.

(4) A person convicted summarily in accordance with subsections (2) and (3) is liable—

15 (a) where the accused is a corporation—to a penalty not exceeding—

(i) \$1,000 for a first offence; or

(ii) \$2,000 for a second or subsequent offence;
or

20 (b) where the accused is not a corporation—to a penalty not exceeding—

(i) \$500 or imprisonment for six months for a first offence; or

25 (ii) \$1,000 or imprisonment for twelve months for a second or subsequent offence.

Indecent Articles and Classified Publications.

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

Special warrant to search for and seize certain indecent articles.

- 5 (a) that an article (not being a publication) 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) that such an article has been published in, on or from specified premises,

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

(2) In the execution of a special warrant issued under
20 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 assistants to use, force in gaining the entry authorised by the special warrant.

25 8. (1) Where an article has been seized pursuant to a special warrant issued under section 7 (1), it shall be returned to the premises in or on which it was seized unless an information is laid against a person for a contravention of section 6 with respect to the article (or an article of which it is a
30 copy) or a member of the police force reports the seizure to a justice who shall thereupon issue his summons calling on the person who, at the time of the seizure of the article,

Summons to show cause against forfeiture of article may issue.

was

Indecent Articles and Classified Publications.

was occupying or using the premises entered by virtue of the warrant to appear before a court of petty sessions to show cause why the article and any other article seized pursuant to the warrant should not be forfeited to Her Majesty.

5 (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—

(a) such of the articles as are not claimed by the person summoned, or by some other person; or

10 (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.

9. A court of petty sessions shall order the return of an article seized pursuant to a warrant issued under section 7 ^{Return of seized article.}

15 (1)—

(a) if the court dismisses an information laid for a contravention of section 6 with respect to the article; or

20 (b) if, on the return before it of a summons issued pursuant to section 8 (1) with respect to the article, it finds that the article is not indecent.

10. (1) This section applies to a business (other than a prescribed business, or a business of a prescribed class, in respect of which the prescribed conditions are complied with) ^{Offences relating to certain type of 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.

(2)

Indecent Articles and Classified Publications.

5 (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
- 10 (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).

15 (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 pro-
20 fession, that ordinarily involves selling or disposing of, or advising on or prescribing the use of, any article, material, compound, preparation, device or other thing referred to in subsection (1).

25 (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
30 referred to in subsection (1).

Penalty

Indecent Articles and Classified Publications.

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
5 a second or subsequent offence.

PART III.

CLASSIFIED PUBLICATIONS.

11. The Minister may, by order published in the **Classification officers.**
Gazette—

10 (a) designate—

(i) the holder for the time being of a specified office, being an office tenable only by a person appointed or employed under the Public Service Act, 1902; or

15 (ii) a person so appointed or employed; or

(b) with the consent of a Minister of State for the Commonwealth, designate—

(i) the holder for the time being of a specified office, not being an office so tenable; or

20 (ii) a person not appointed or employed under that Act,

as a classification officer for the purposes of this Act.

12. (1) The Minister or a person authorised by him **Application for classification.**
may apply to a classification officer for the classification of
25 any publication.

(2)

Indecent Articles and Classified Publications.

(2) A person who proposes to publish a publication may apply to a classification officer for the classification of that publication.

5 (3) Where a classification officer classifies a publication pursuant to an application under subsection (1) or (2) and the applicant objects to the classification, the applicant may, not later than seven days after the classification takes effect, apply to the Board for classification of the publication.

10 (4) Where the Board classifies a publication pursuant to an application made under subsection (3) otherwise than by the Minister or a person authorised by him and the applicant objects to the classification, the applicant may, not later than seven days after the classification takes effect apply to the District Court, in accordance with rules of court, for
15 classification of the publication.

(5) Where a classification officer classifies a publication pursuant to an application under subsection (2) and the Minister objects to the classification, the Minister or a person authorised by him may apply at any time to the Board for
20 classification of the publication.

(6) Where a publication has been classified under section 13, an application, or further application, may not be made under subsection (2) in respect of the publication.

25 (7) Where a person requests the Minister to apply under subsection (1) for a further classification of a classified publication and, upon the application of the Minister, the publication is again classified, that application by the Minister shall, notwithstanding subsection (6), be deemed, for the purposes of subsections (3), (4) and (5), to have been duly
30 made by that person under subsection (2).

(8)

Indecent Articles and Classified Publications.

(8) The making of an application under this section does not affect any classification of a publication that—

- (a) is in force when the application is made; or
 (b) takes effect after the application is made and before
 5 the classification pursuant to the application takes effect.

13. (1) Where a publication is the subject of an application under section 12 to a classifying authority, the authority may—

Classifica-
tion of
publica-
tions.

- 10 (a) classify the publication as an unrestricted publication; or
 (b) having regard—
 (i) to the manner in which, and the extent to which, the publication relates to or depicts
 15 matters of sex, drug addiction, horror, crime, cruelty or violence; and
 (ii) to the provisions of sections 17, 18 and 19, classify the publication as a restricted publication or a direct sale publication.

20 (2) If a classifying authority so directs when classifying a publication, the classification decided upon extends to any subsequent edition, series, number, instalment or issue of the publication notwithstanding any reconstruction (whether
 25 by way of alteration in title, change of subject, characters, story or other features, or in any other manner) of the publication.

14. (1) Where the Minister receives notice of a classification under section 13 (1), or of a direction under section 13 (2), with respect to a publication, he shall cause the
 30 classification or direction to be notified in the Gazette.

Gazette of
classifica-
tion of
publica-
tion.

(2)

Indecent Articles and Classified Publications.

(2) Neither a classification of a publication under section 13 (1) nor a direction given under section 13 (2) has effect until it is notified under subsection (1).

(3) A notification in the Gazette that purports to be
5 a notification under subsection (1)—

(a) is evidence that a publication specified therein has been classified under section 13 as is specified in the notification;

10 (b) is evidence that a direction specified therein with respect to a publication has been given with respect to the publication;

(c) is evidence that any classification or direction specified therein is in force; and

15 (d) revokes any earlier such notification to the extent of any inconsistency.

(4) Where, but for this subsection, two classifications of a publication would take effect on the same day—

20 (a) a classification by the Board shall be deemed to take effect later than a classification by a classification officer; and

(b) a classification by the District Court shall be deemed to take effect later than a classification by the Board.

25 **15.** (1) The Governor may appoint a Publications Classification Board consisting of not less than five, 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 Board by or under this Act.

(2)

Indecent Articles and Classified Publications.

- (2) Of the members of the Board—
- (a) one shall be a recognised expert in literature, art, medicine or science; and
 - (b) one shall be a barrister or solicitor,
- 5 and, of the other members of the Board, one at least shall be a man and one at least shall be a woman.
- (3) Of the members of the Board, one shall, by the instrument of his appointment as a member of the Board or by a separate instrument, be appointed by the Governor as the
- 10 chairman of the Board and another shall, in like manner, be appointed as deputy chairman of the Board.
- (4) A person who is of or above the age of sixty-five years is not eligible for appointment as a member of the Board.
- 15 (5) Subject to this section, a member of the Board holds office for a period of five years but is eligible for reappointment.
- (6) A member of the Board vacates his office if he—
- (a) dies;
 - 20 (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;
 - 25 (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)

Indecent Articles and Classified Publications.

(d) resigns his office by writing under his hand addressed to the Minister;

(e) attains the age of sixty-five years; or

(f) is removed from office by the Governor.

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

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

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

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

20 (11) The powers, authorities, duties and functions conferred or imposed upon the Board may only be exercised or performed pursuant to a decision supported by a majority of votes at a duly convened meeting of the Board at which a quorum is present.

25 (12) If, at a meeting of the Board, 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
30 chairman may exercise and perform the powers, authorities, duties and functions conferred and imposed on the chairman by this Act.

(14)

Indecent Articles and Classified Publications.

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

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

16. (1) The Board shall report to the Minister on any
10 matter arising out of the administration of this Act that is referred to it by the Minister. Board to make certain reports to Minister.

(2) Where the Board is obliged under this section to make a report on any matter, a member of the Board who was, or was part of, the minority when the decision to make
15 the report was made may himself make a report to the Minister.

17. (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 publishes a restricted publication; or

20 (b) he has a restricted publication in his possession apparently for the purpose of publishing it in a street or public place (not being a shop).

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

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

(a) in a part of a shop that is not its window or entrance recess, he displays or exhibits a restricted
30 publication to public view; or

Indecent Articles and Classified Publications.

(b) in any part of a shop (including its window or entrance recess) he renders a restricted publication readily accessible to the public.

(4) Subject to subsection (5), it is a defence to a
5 prosecution for a contravention of this section if it is proved that the defendant took all such steps as could reasonably have been taken to prevent any restricted publication being exhibited, displayed or rendered accessible in the part of the shop to which the charge relates to any person under the age
10 of eighteen years.

(5) Subsection (4) does not apply where a restricted publication was displayed, exhibited or rendered accessible to a person under the age of eighteen years unless it is also proved that the person by whom the publication was dis-
15 played, exhibited or rendered accessible had reasonable grounds for believing, and did believe, that the person under that age was of or above that age.

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

(7) It is a defence to a prosecution for a contravention of this section 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 he sold, hired or offered
25 the restricted publication the subject of the charge was of or above 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
30 a first offence and \$500 or imprisonment for six months for a second or subsequent offence.

Indecent Articles and Classified Publications.

5 **18.** (1) A person contravenes this section if, in any part of a shop (including its window and any entrance recess), he displays or exhibits a direct sale publication to public view or renders a direct sale publication readily accessible to the public. Offences in relation to direct sale publications.

(2) Except as provided by subsection (3), a person contravenes this section if he publishes a direct sale publication unless—

10 (a) the act that constitutes publishing is a sale or letting on hire of a single copy of the publication effected—

(i) in a shop pursuant to an unsolicited request made by the purchaser or hirer present in the shop when the request is made; or

15 (ii) if the regulations so provide, otherwise than in a shop, street or public place,

in such manner, and in compliance with such conditions, as may be prescribed;

(b) the publishing is a publishing to one person only; and

20 (c) the person to whom the publication is published is, at the time of the publication, of or above the age of eighteen years.

(3) A person who publishes a direct sale publication does not contravene this section if he is of or above the age of 25 eighteen years and he publishes the publication in the ordinary course of business for the purpose of giving possession thereof to—

(a) another person of or above that age whose business is or includes the publishing of publications; or

30 (b) a servant or agent, of or above that age, of that other person,

for use in the business of that other person in so far as that business includes the publishing of publications.

(4)

Indecent Articles and Classified Publications.

(4) Regulations made for the purposes of subsection (2) (a) may be made to differ in their application according to whether a sale or hiring takes place in a shop or elsewhere and according to such other matters as are specified in the regulations.

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.

19. (1) A person contravenes this section if, except to the extent provided by section 14 and the regulations, he publishes any advertising material of such a nature that a person may thereby be informed, whether by implication or otherwise—

- (a) that a publication is a restricted publication or a direct sale publication; or
- (b) that an identifiable place or person may be resorted to for the purpose of perusing or obtaining a restricted or direct sale publication, whether or not the publication is identifiable.

(2) Regulations made for the purposes of subsection (1) may be made to differ in their application according to whether a publication is a restricted publication or a direct sale publication and according to such other matters as are specified in the regulations.

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.

Indecent Articles and Classified Publications.

20. Where a person has been convicted of an offence against this Act constituted by a contravention of section 17, 18 or 19 or where in respect of any person such an offence has been found by a court to have been proved, there shall
5 be forfeited to Her Majesty—

Forfeiture
of certain
publications.

- (a) where the contravention involved a restricted publication—all restricted publications that were;
or
- 10 (b) where the contravention involved a direct sale publication—all direct sale publications that were;
or
- (c) where the contravention involved advertising material—all advertising material of the nature referred to in section 19 that was,

15 at the time of the commission of the offence in the possession or apparently under the control of that person.

21. (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
20 publication or a direct sale 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
25 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).

30 Penalty: \$100.

PART

Indecent Articles and Classified Publications.

PART IV.

GENERAL.

22. Where a corporation contravenes a provision of this Act, a person who, at the time of the contravention, was within the meaning of the Companies Act, 1961, a director of, or was a person concerned in the management of, the corporation shall, without affecting the liability of the corporation to be punished for the contravention, be deemed also to have contravened the provision and shall be liable to the penalty prescribed in the case of such a contravention by a person other than a corporation unless he satisfies the court that the provision was contravened by the corporation without his knowledge or that he used all due diligence to prevent the contravention by the corporation.

Liability of directors, etc., where provision contravened by corporation.

23. Except to the extent that this Act otherwise provides, proceedings for a contravention of a provision of this Act or the regulations, and proceedings on the return of a summons issued pursuant to section 8 (1), shall be heard and determined by a stipendiary magistrate sitting in petty sessions.

Proceedings to be before stipendiary magistrate, unless indictable.

24. In any proceedings in which indecency is in issue, 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.

Certain evidence may be admitted.

25. Proceedings may not be instituted against any person for publishing after the appointed day an obscene libel or an indecent article—

Certain proceedings prohibited.

(a) for the purposes of an application under section 12; or

(b) where the libel or article is, or is part of, a classified publication and that publication is not published in contravention of section 17, 18 or 19.

26.

Indecent Articles and Classified Publications.

26. Notwithstanding anything in any contract or agree-
ment entered into before or after the appointed day, a
distributor, bookseller, newsagent or other person is not liable
for breach of contract by reason only of his rejecting an article
5 that is delivered to him, or by reason only of his refusing to
accept delivery of or to deal in any such article, where—

Exoneration
from
liability
under
certain
contracts.

10 (a) the article is a restricted publication or a direct sale
publication 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
contravention of a provision of this Act; and

15 (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.

20 27. (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
25 of the period of one month that next succeeds the giving to
that person of a notice specifying—

Notice of
action.

- (a) the cause of action;
- (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)

Indecent Articles and Classified Publications.

(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 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)

Indecent Articles and Classified Publications.

5 (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.

10 (7) Proceedings may not be instituted or maintained by or in favour of any person against a classification officer or any member of the Board or any other person acting under the direction of the Board or a classification officer in respect of any act done or omitted to be done bona fide in the execution of any power or authority conferred by this Act on the officer or the Board.

15 28. (1) 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. Savings and transitional provisions.

(2) Where—

20 (a) before the appointed day the Minister referred for the consideration of the State Advisory Committee on Publications constituted under the Acts repealed by this Act a matter arising out of the administration of the Acts repealed by this Act; or

25 (b) before or after that day the Minister received or receives a report by that Committee on a matter that, before that day, 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 16.

Indecent Articles and Classified Publications.

5 (3) Where a notification in the Gazette under section 33 of the Obscene and Indecent Publications Act 1901 was in force immediately before the appointed day, the publication to which it relates shall, until a classification of the publication pursuant to an application under section 12 (1) or (2) takes effect, be deemed to be a restricted publication.

10 (4) A notification in the Gazette that, immediately before the appointed day, was in force under section 35 of the Obscene and Indecent Publications Act 1901 shall be deemed to be a notification, published on that day under section 14, classifying the publication to which it relates as an unrestricted publication pursuant to an application under section 12 (1).

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

29. The provisions of sections 6, 17, 18 and 19 do not apply to or in respect of— Exemption for certain libraries.

20 (a) anything done in the execution of the Library of New South Wales Act, 1969; or

(b) a prescribed library, or a library of a prescribed class, in respect of which the prescribed conditions are complied with.

25 30. (1) The Governor may make regulations for or with respect to all matters that by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act. Regulations.

(2)

Indecent Articles and Classified Publications.

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) applications under section 12 (1), (2) and (5);
 5 (b) the marking of restricted or direct sale publications;
 (c) the wrapping of restricted or direct sale publications.

(3) The regulations may impose a penalty not exceeding \$500 for a contravention thereof.

SCHEDULE.

Sec. 3.

| 10 | Citation. | Short title. | Extent of repeal. |
|----|-----------------|--|-------------------|
| | No. 12, 1901 .. | Obscene and Indecent Publications Act 1901. | The whole Act. |
| | No. 12, 1908 .. | Police Offences (Amendment) Act, 1908. | Part V. |
| 15 | No. 36, 1946 .. | Obscene and Indecent Publications (Amendment) Act, 1946. | The whole Act. |
| | 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. |
| 20 | No. 26, 1968 .. | Obscene and Indecent Publications (Amendment) Act, 1968. | The whole Act. |

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975
[32c]

No. , 1975.

A BILL

With respect to the maintenance of standards of decency in the circulation and display of publications and certain other articles; to repeal the Obscene and Indecent Publications Act 1901; and for purposes connected therewith.

[MR WADDY—6 *March*, 1975.]

BE

Indecent Articles and Classified Publications.

BE it enacted by the Queen's Most Excellent Majesty, by
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
5 follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Indecent Articles and **Short**
Classified Publications Act, 1975". **title.**

10 2. (1) Section 1 and this section commence on the date **Commence-**
of assent to this Act. **ment.**

(2) Subject to subsection (1), this Act commences
on such day as may be appointed by the Governor in respect
thereof and as may be notified by proclamation published in
15 the Gazette.

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

4. This Act is divided, as follows :— **Division**
of Act.

PART I.—PRELIMINARY—*ss.* 1–5.

20 PART II.—INDECENT ARTICLES—*ss.* 6–10.

PART III.—CLASSIFIED PUBLICATIONS—*ss.* 11–21.

PART IV.—GENERAL—*ss.* 22–30.

SCHEDULE.

Indecent Articles and Classified Publications.

5. (1) In this Act, except to the extent that the context or subject-matter otherwise indicates or requires— ^{Interpre-}
^{tation.}

“appointed day” means the day appointed and notified under section 2 (2);

5 “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

10 (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);

15 “Board” means the Publications Classification Board constituted under section 15;

“classification officer” means a person designated as a classification officer under section 11;

20 “classified publication” means an unrestricted publication, a restricted publication or a direct sale publication;

“classifying authority” means a classification officer, the Board or the District Court;

“direct sale publication” means—

25 (a) a publication in respect of which a classification under section 13 as a direct sale publication is in force; or

(b) a copy of such a publication;

“District

Indecent Articles and Classified Publications.

“District Court” means the District Court of New South Wales;

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

“publication” means a book, newspaper, magazine, periodical or like printed matter;

“publish” includes—

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

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

20 (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;

25 “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;

“restricted publication” means—

30 (a) a publication in respect of which a classification under section 13 as a restricted publication is in force; or

(b) a copy of such a publication;

“unrestricted

Indecent Articles and Classified Publications.

“unrestricted publication” means—

- (a) a publication in respect of which a classification under section 13 as an unrestricted publication is in force; or
- 5 (b) a copy of such a publication.

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

- 10 (a) a person publishes a positive or negative photograph if he publishes a positive or negative picture made from it in a form visible by reflected or transmitted light or if he makes it available for use in making such a picture;
- 15 (b) a person publishes a record if he publishes the sound or picture recorded thereon, whether or not he publishes it in a distorted or altered form; and
- 20 (c) a person in the State, or who is resident in the State, publishes an article notwithstanding that the person to whom, or the place at which, he publishes the article is not within the State.

(3) 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.

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

(5)

Indecent Articles and Classified Publications.

(5) For the purposes of this Act, a person shall be deemed to have published an article in a street or public place if either he or the person to whom he publishes the article is, at the time of the publishing, in the street or public place.

PART II.

INDECENT ARTICLES.

6. (1) Subject to section 25, a person who publishes an indecent article contravenes this section and is liable, on conviction on indictment—
- 10 Offence relating to publication of an indecent article.
- (a) where the accused is a corporation—to a penalty not exceeding—
- (i) \$2,000 for a first offence; or
- (ii) \$4,000 for a second or subsequent offence;
- 15 or
- (b) where the accused is not a corporation—to a penalty not exceeding—
- (i) \$1,000 or imprisonment for twelve months for a first offence; or
- 20 (ii) \$2,000 or imprisonment for two years for a second or subsequent offence.

(2) Where—

- (a) a person is charged before a stipendiary magistrate or two justices with a contravention of this section;
- 25 (b) the evidence for the prosecution is, in the opinion of the magistrate or justices, sufficient to put the accused on his trial;

(c)

Indecent Articles and Classified Publications.

- (c) it appears to the magistrate or justices that the case may properly be disposed of summarily; and
- (d) the accused consents to the case being disposed of summarily and does not desire to have the case determined by a jury,
- 5 the magistrate or justices may hear and determine the charge in a summary manner.

(3) The provisions of sections 479, 480 and 481 of the Crimes Act 1900 apply to and in respect of a case disposed of in accordance with subsection (2) in the same way as they apply to and in respect of a case disposed of in accordance with section 476 of that Act.

10

(4) A person convicted summarily in accordance with subsections (2) and (3) is liable—

- 15 (a) where the accused is a corporation—to a penalty not exceeding—
- (i) \$1,000 for a first offence; or
- (ii) \$2,000 for a second or subsequent offence; or
- 20 (b) where the accused is not a corporation—to a penalty not exceeding—
- (i) \$500 or imprisonment for six months for a first offence; or
- (ii) \$1,000 or imprisonment for twelve months for a second or subsequent offence.
- 25

Indecent Articles and Classified Publications.

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

Special warrant to search for and seize certain indecent articles.

5 (a) that an article (not being a publication) 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) that such an article has been published in, on or from specified premises,

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

(2) In the execution of a special warrant issued under
20 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 assistants to use, force in gaining the entry authorised by the special warrant.

25 8. (1) Where an article has been seized pursuant to a special warrant issued under section 7 (1), it shall be returned to the premises in or on which it was seized unless an information is laid against a person for a contravention of section 6 with respect to the article (or an article of which it is a
30 copy) or a member of the police force reports the seizure to a justice who shall thereupon issue his summons calling on the person who, at the time of the seizure of the article,

Summons to show cause against forfeiture of article may issue.

was

Indecent Articles and Classified Publications.

was occupying or using the premises entered by virtue of the warrant to appear before a court of petty sessions to show cause why the article and any other article seized pursuant to the warrant should not be forfeited to Her Majesty.

5 (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—

(a) such of the articles as are not claimed by the person summoned, or by some other person; or

10 (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.

9. A court of petty sessions shall order the return of an article seized pursuant to a warrant issued under section 7 (1)—
15 (1)— Return of seized article.

(a) if the court dismisses an information laid for a contravention of section 6 with respect to the article; or

20 (b) if, on the return before it of a summons issued pursuant to section 8 (1) with respect to the article, it finds that the article is not indecent.

10. (1) This section applies to a business an object of which is the sale or disposal of any article, material, com- pound, 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)

Indecent Articles and Classified Publications.

(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
5 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
- 10 (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).

15 (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 pro-
20 fession, that ordinarily involves selling or disposing of, or advising on or prescribing the use of, any article, material, compound, preparation, device or other thing referred to in subsection (1).

(5) A person contravenes this section if, in or in
25 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
30 referred to in subsection (1).

Penalty

Indecent Articles and Classified Publications.

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
5 a second or subsequent offence.

PART III.

CLASSIFIED PUBLICATIONS.

11. The Minister may, by order published in the *Classification Gazette*—
Gazette—
Classification officers.

- 10 (a) designate—
- (i) the holder for the time being of a specified office, being an office tenable only by a person appointed or employed under the Public Service Act, 1902; or
 - 15 (ii) a person so appointed or employed; or
- (b) with the consent of a Minister of State for the Commonwealth, designate—
- (i) the holder for the time being of a specified office, not being an office so tenable; or
 - 20 (ii) a person not appointed or employed under that Act,

as a classification officer for the purposes of this Act.

12. (1) The Minister or a person authorised by him *Application for classification.*
may apply to a classification officer for the classification of
25 any publication.

(2)

Indecent Articles and Classified Publications.

(2) A person who proposes to publish a publication may apply to a classification officer for the classification of that publication.

5 (3) Where a classification officer classifies a publication pursuant to an application under subsection (1) or (2) and the applicant objects to the classification, the applicant may, not later than seven days after the classification takes effect, apply to the Board for classification of the publication.

10 (4) Where the Board classifies a publication pursuant to an application made under subsection (3) otherwise than by the Minister or a person authorised by him and the applicant objects to the classification, the applicant may, not later than seven days after the classification takes effect apply to the District Court, in accordance with rules of court, for
15 classification of the publication.

(5) Where a classification officer classifies a publication pursuant to an application under subsection (2) and the Minister objects to the classification, the Minister or a person authorised by him may apply at any time to the Board for
20 classification of the publication.

(6) Where a publication has been classified under section 13, an application, or further application, may not be made under subsection (2) in respect of the publication.

25 (7) Where a person requests the Minister to apply under subsection (1) for a further classification of a classified publication and, upon the application of the Minister, the publication is again classified, that application by the Minister shall, notwithstanding subsection (6), be deemed, for the purposes of subsections (3), (4) and (5), to have been duly
30 made by that person under subsection (2).

(8)

Indecent Articles and Classified Publications.

(8) The making of an application under this section does not affect any classification of a publication that—

- (a) is in force when the application is made; or
- (b) takes effect after the application is made and before the classification pursuant to the application takes effect.

13. (1) Where a publication is the subject of an application under section 12 to a classifying authority, the authority may—

- (a) classify the publication as an unrestricted publication; or
- (b) having regard—
 - (i) to the manner in which, and the extent to which, the publication relates to or depicts matters of sex, drug addiction, horror, crime, cruelty or violence; and
 - (ii) to the provisions of sections 17, 18 and 19, classify the publication as a restricted publication or a direct sale publication.

(2) If a classifying authority so directs when classifying a publication, the classification decided upon extends to any subsequent edition, series, number, instalment or issue of the publication notwithstanding any reconstruction (whether by way of alteration in title, change of subject, characters, story or other features, or in any other manner) of the publication.

14. (1) Where the Minister receives notice of a classification under section 13 (1), or of a direction under section 13 (2), with respect to a publication, he shall cause the classification or direction to be notified in the Gazette.

(2)

Indecent Articles and Classified Publications.

(2) Neither a classification of a publication under section 13 (1) nor a direction given under section 13 (2) has effect until it is notified under subsection (1).

(3) A notification in the Gazette that purports to be
5 a notification under subsection (1)—

(a) is evidence that a publication specified therein has been classified under section 13 as is specified in the notification;

10 (b) is evidence that a direction specified therein with respect to a publication has been given with respect to the publication;

(c) is evidence that any classification or direction specified therein is in force; and

15 (d) revokes any earlier such notification to the extent of any inconsistency.

(4) Where, but for this subsection, two classifications of a publication would take effect on the same day—

20 (a) a classification by the Board shall be deemed to take effect later than a classification by a classification officer; and

(b) a classification by the District Court shall be deemed to take effect later than a classification by the Board.

25 **15.** (1) The Governor may appoint a Publications Classification Board consisting of not less than five, 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 Board by or under this Act.

(2)

Indecent Articles and Classified Publications.

(2) Of the members of the Board—

(a) one shall be a recognised expert in literature, art, medicine or science; and

(b) one shall be a barrister or solicitor,

5 and, of the other members of the Board, one at least shall be a man and one at least shall be a woman.

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

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

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

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

(a) dies;

20 (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;

25 (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)

Indecent Articles and Classified Publications.

- (d) resigns his office by writing under his hand addressed to the Minister;
 - (e) attains the age of sixty-five years; or
 - (f) is removed from office by the Governor.
- 5 (7) Where a vacancy occurs in the office of a member of the Board otherwise than by reason of the expiration of his term of office, the Governor may, subject to subsection (2), appoint a person to the vacant office for the residue of the term of office of his predecessor.
- 10 (8) A member of the Board is entitled to remuneration and expenses at rates from time to time fixed by the Governor.
- 15 (9) Meetings of the Board 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 Board constitutes a quorum for the purposes of a meeting of the Board.
- 20 (11) The powers, authorities, duties and functions conferred or imposed upon the Board may only be exercised or performed pursuant to a decision supported by a majority of votes at a duly convened meeting of the Board at which a quorum is present.
- 25 (12) If, at a meeting of the Board, the voting on any matter is equal, the chairman is entitled to a casting vote in addition to his deliberative vote.
- 30 (13) In the absence of the chairman, the deputy chairman may exercise and perform the powers, authorities, duties and functions conferred and imposed on the chairman by this Act.

(14)

Indecent Articles and Classified Publications.

(14) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment by the Governor of a member of the Board 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 Board is not, for the purposes of the Constitution Act, 1902, an office of profit under the Crown.

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

Board to make certain reports to Minister.

(2) Where the Board is obliged under this section to make a report on any matter, a member of the Board 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

17. (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 publishes a restricted publication; or
- 20 (b) he has a restricted publication in his possession apparently for the purpose of publishing it in a street or public place (not being a shop).

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

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

- 30 (a) in a part of a shop that is not its window or entrance recess, he displays or exhibits a restricted publication to public view; or

Indecent Articles and Classified Publications.

(b) in any part of a shop (including its window or entrance recess) he renders a restricted publication readily accessible to the public.

(4) Subject to subsection (5), it is a defence to a
5 prosecution for a contravention of this section if it is proved that the defendant took all such steps as could reasonably have been taken to prevent any restricted publication being exhibited, displayed or rendered accessible in the part of the shop to which the charge relates to any person under the age
10 of eighteen years.

(5) Subsection (4) does not apply where a restricted publication was displayed, exhibited or rendered accessible to a person under the age of eighteen years unless it is also proved that the person by whom the publication was dis-
15 played, exhibited or rendered accessible had reasonable grounds for believing, and did believe, that the person under that age was of or above that age.

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

(7) It is a defence to a prosecution for a contravention of this section 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 he sold, hired or offered
25 the restricted publication the subject of the charge was of or above 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
30 a first offence and \$500 or imprisonment for six months for a second or subsequent offence.

Indecent Articles and Classified Publications.

18. (1) A person contravenes this section if, in any part of a shop (including its window and any entrance recess), he displays or exhibits a direct sale publication to public view or renders a direct sale publication readily accessible to the public.

Offences in relation to direct sale publications.

(2) Except as provided by subsection (3), a person contravenes this section if he publishes a direct sale publication unless—

10 (a) the act that constitutes publishing is a sale or letting on hire of a single copy of the publication effected—

(i) in a shop pursuant to an unsolicited request made by the purchaser or hirer present in the shop when the request is made; or

15 (ii) if the regulations so provide, otherwise than in a shop, street or public place, in such manner, and in compliance with such conditions, as may be prescribed;

(b) the publishing is a publishing to one person only; and

20 (c) the person to whom the publication is published is, at the time of the publication, of or above the age of eighteen years.

(3) A person who publishes a direct sale publication does not contravene this section if he is of or above the age of 25 eighteen years and he publishes the publication in the ordinary course of business for the purpose of giving possession thereof to—

(a) another person of or above that age whose business is or includes the publishing of publications; or

30 (b) a servant or agent, of or above that age, of that other person,

for use in the business of that other person in so far as that business includes the publishing of publications.

(4)

Indecent Articles and Classified Publications.

(4) Regulations made for the purposes of subsection (2) (a) may be made to differ in their application according to whether a sale or hiring takes place in a shop or elsewhere and according to such other matters as are specified in the regulations.

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.

19. (1) A person contravenes this section if, except to the extent provided by section 14 and the regulations, he publishes any advertising material of such a nature that a person may thereby be informed, whether by implication or otherwise—

- (a) that a publication is a restricted publication or a direct sale publication; or
- (b) that an identifiable place or person may be resorted to for the purpose of perusing or obtaining a restricted or direct sale publication, whether or not the publication is identifiable.

(2) Regulations made for the purposes of subsection (1) may be made to differ in their application according to whether a publication is a restricted publication or a direct sale publication and according to such other matters as are specified in the regulations.

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.

Indecent Articles and Classified Publications.

20. Where a person has been convicted of an offence Forfeiture of certain publications. against this Act constituted by a contravention of section 17, 18 or 19 or where in respect of any person such an offence has been found by a court to have been proved, there shall
5 be forfeited to Her Majesty—

- (a) where the contravention involved a restricted publication—all restricted publications that were;
or
- 10 (b) where the contravention involved a direct sale publication—all direct sale publications that were;
or
- (c) where the contravention involved advertising material—all advertising material of the nature referred to in section 19 that was,

15 at the time of the commission of the offence in the possession or apparently under the control of that person.

21. (1) Where a member of the police force has Member of the police force may require certain particulars. reasonable cause to suspect that a person in a street or public place (including a shop) who is in possession of a restricted
20 publication or a direct sale 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
25 a reasonable time, evidence of the correctness of the age, name or address stated.

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

30 Penalty: \$100.

PART

Indecent Articles and Classified Publications.

PART IV.

GENERAL.

22. Where a corporation contravenes a provision of this Act, a person who, at the time of the contravention, was within the meaning of the Companies Act, 1961, a director of, or was a person concerned in the management of, the corporation shall, without affecting the liability of the corporation to be punished for the contravention, be deemed also to have contravened the provision and shall be liable to the penalty prescribed in the case of such a contravention by a person other than a corporation unless he satisfies the court that the provision was contravened by the corporation without his knowledge or that he used all due diligence to prevent the contravention by the corporation.
23. Except to the extent that this Act otherwise provides, proceedings for a contravention of a provision of this Act or the regulations, and proceedings on the return of a summons issued pursuant to section 8 (1), shall be heard and determined by a stipendiary magistrate sitting in petty sessions.
24. In any proceedings in which indecency is in issue, 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.
25. Proceedings may not be instituted against any person for publishing after the appointed day an obscene libel or an indecent article—
- (a) for the purposes of an application under section 12; or
 - (b) where the libel or article is, or is part of, a classified publication and that publication is not published in contravention of section 17, 18 or 19.

26.

Indecent Articles and Classified Publications.

26. Notwithstanding anything in any contract or agreement entered into before or after the appointed day, a distributor, bookseller, newsagent or other person is not liable for breach of contract by reason only of his rejecting 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—

Exoneration
from
liability
under
certain
contracts.

(a) the article is a restricted publication or a direct sale publication 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 contravention of a provision of 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 therefor, as soon as practicable after he becomes aware of the nature of the article.

27. (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—

Notice of
action.

- (a) the cause of action;
- (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.

Indecent Articles and Classified Publications.

(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 by the Minister to inspect the property damaged
5 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
10 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—

- 15 (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.

20 (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
25 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.

30 (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)

Indecent Articles and Classified Publications.

(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) Proceedings may not be instituted or maintained by or in favour of any person against a classification officer or any member of the Board or any other person acting under the direction of the Board or a classification officer in respect of any act done or omitted to be done bona fide in the execution of any power or authority conferred by this Act on the officer or the Board.

28. (1) 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.

Savings and transitional provisions.

(2) Where—

(a) before the appointed day the Minister referred for the consideration of the State Advisory Committee on Publications constituted under the Acts repealed by this Act a matter arising out of the administration of the Acts repealed by this Act; or

(b) before or after that day the Minister received or receives a report by that Committee on a matter that, before that day, 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 16.

Indecent Articles and Classified Publications.

(3) Where a notification in the Gazette under section 33 of the Obscene and Indecent Publications Act 1901 was in force immediately before the appointed day, the publication to which it relates shall, until a classification
5 of the publication pursuant to an application under section 12 (1) or (2) takes effect, be deemed to be a restricted publication.

(4) A notification in the Gazette that, immediately before the appointed day, was in force under section 35 of
10 the Obscene and Indecent Publications Act 1901 shall be deemed to be a notification, published on that day under section 14, classifying the publication to which it relates as an unrestricted publication pursuant to an application under section 12 (1).

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

29. The provisions of sections 6, 17, 18 and 19 do not apply to or in respect of—
Exemption for certain libraries.

20 (a) anything done in the execution of the Library of New South Wales Act, 1969; or

(b) a prescribed library, or a library of a prescribed class, in respect of which the prescribed conditions are complied with.

30. (1) The Governor may make regulations for or with
25 respect to all matters that by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.
Regulations.

(2)

Indecent Articles and Classified Publications.

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) applications under section 12 (1), (2) and (5);
 5 (b) the marking of restricted or direct sale publications;
 (c) the wrapping of restricted or direct sale publications.

(3) The regulations may impose a penalty not exceeding \$500 for a contravention thereof.

SCHEDULE.

Sec. 3.

| 10 | Citation. | Short title. | Extent of repeal. |
|----|-----------------|--|-------------------|
| | No. 12, 1901 .. | Obscene and Indecent Publications Act 1901. | The whole Act. |
| | No. 12, 1908 .. | Police Offences (Amendment) Act, 1908. | Part V. |
| 15 | No. 36, 1946 .. | Obscene and Indecent Publications (Amendment) Act, 1946. | The whole Act. |
| | 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. |
| 20 | No. 26, 1968 .. | Obscene and Indecent Publications (Amendment) Act, 1968. | The whole Act. |

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975

[32c]

Indigent Authors and Classified Publications

- (1) the Government may make regulations for the purpose
- (2) Without prejudice to the generality of subsection
- (3) The regulations may impose a penalty not exceeding \$500 for a contravention thereof.
- (4) applications under section 12 (1) (2) and (3)
- (5) the making of a request or demand for publication
- (6) the making of a request or demand for publication

SCHEDULE

| Section | Short title | Extent of repeal |
|------------------------|---|------------------|
| No. 12 (1) (2) and (3) | Indigent Authors and Classified Publications, The whole Act | |
| No. 12 (1) (2) and (3) | Indigent Authors (Amendment) Act, Part V | |
| No. 12 (1) (2) and (3) | Indigent Authors and Classified Publications, The whole Act | |
| No. 12 (1) (2) and (3) | Indigent Authors and Classified Publications, The whole Act | |
| No. 12 (1) (2) and (3) | Indigent Authors and Classified Publications, The whole Act | |
| No. 12 (1) (2) and (3) | Indigent Authors and Classified Publications, The whole Act | |
| No. 12 (1) (2) and (3) | Indigent Authors and Classified Publications, The whole Act | |

IN FORCE

1952

**INDECENT ARTICLES AND CLASSIFIED PUBLICATIONS
BILL, 1975**

EXPLANATORY NOTE

The object of this Bill is to institute, in co-operation with the Commonwealth, a system whereby adults are protected from unsolicited exposure to material offensive to them and children and young persons are protected from exposure to indecent material.

The Bill contains provisions as follows :—

1. Clause 1 specifies the short title.
2. Clause 2 is the “commencement” provision.
3. Clause 3 repeals the Obscene and Indecent Publications Act 1901 and various amending Acts relating to the same subject-matter.
4. Clause 4 specifies the manner in which the Bill is divided.
5. Clause 5 is the interpretation provision in which—
 - (a) “publication” is defined as a book, newspaper, magazine, periodical or like printed matter;
 - (b) a film that might otherwise be indecent is classified as not indecent if it is registered under the Theatres and Public Halls Act, 1908.
6. Clause 6 makes it an indictable offence to publish an indecent article but allows the accused in a proper case, to elect to be dealt with summarily.
7. Clause 7 authorises the issue of a search warrant in respect of indecent articles other than publications and for their seizure.
8. Clause 8 specifies the procedure whereby an article seized under a search warrant is forfeited if it is adjudged indecent or is not claimed by any person.
9. Clause 9 specifies the circumstances in which an article seized under a search warrant is required to be returned.
10. Clause 10 prohibits advertising relating to the activities of “sex shops” and also prohibits the public or unsolicited display of the wares of “sex shops”.
11. Clause 11 provides for the appointment by the Minister of classification officers for the purposes of the Act.

12. Clause 12 enables the Minister or a publisher to have a publication classified (in accordance with clause 13) by submitting it—

- (a) to a classification officer; or
- (b) if dissatisfied with the classification allotted by the classification officer—to the Publications Classification Board constituted by the Act; or
- (c) in the case of a publisher, if again dissatisfied—to the District Court.

13. Clause 13 requires a classifying authority to classify a publication submitted to it as—

- (a) an unrestricted publication;
- (b) a restricted publication; or
- (c) a direct sale publication.

14. Clause 14 requires the Minister to notify the classification of a publication in the Gazette and specifies the consequences of that publication.

15. Clause 15 provides for the establishment by the Governor of a Publications Classification Board having five, six or seven members.

16. Clause 16 requires the Board to report to the Minister on any matter relating to administration of the Act that is referred to it by the Minister.

17. Clause 17 imposes a penalty for the publication of a restricted publication in breach of certain conditions.

18. Clause 18 imposes a penalty for the publication of a direct sale publication in breach of certain conditions.

19. Clause 19 controls advertising relating to restricted publications and direct sale publications.

20. Clause 20 provides for the forfeiture of certain publications following conviction of an offence relating to restricted or direct sale publications.

21. Clause 21 requires a person in a public place who is in possession of a restricted publication or a direct sale publication to give his name and address upon being required to do so by a member of the police force who reasonably suspects him of being under the age of 18 years.

22. Clause 22 relates to the liability of directors and managerial personnel where a corporation is convicted of an offence under the Act.

23. Clause 23 provides for proceedings for non-indictable offences against the Act and regulations to be determined summarily.

24. Clause 24 permits the introduction, in any proceedings in which indecency is in issue, of expert evidence of merit in the field of literature, art, medicine or science.

25. Section 25 prohibits indictment for publishing an obscene libel or an indecent article—

- (a) where the libel or article is published for the purposes of an application for its classification under the Act; or
- (b) where the libel or article is, or is part of, a publication classified under the Act and is not published in contravention of the conditions appropriate to its classification.

26. Clause 26 authorises a person, in certain circumstances to refuse to accept delivery of or to deal with certain articles notwithstanding that he has contracted to accept or deal with them.

27. Clause 27 requires notice of action to be given before anyone can institute proceedings against a person acting in execution of the Act.

28. Clause 28 contains savings and transitional provisions.

29. Clause 29 exempts from the operation of certain penal provisions of the Act, the Library of New South Wales and prescribed libraries.

30. Clause 30 provides for the making of regulations.

22. Section 11, which is subject to the following conditions:

(a) when the first of the following conditions is satisfied, the

(b) when the first of the following conditions is satisfied, the

(c) when the first of the following conditions is satisfied, the

(d) when the first of the following conditions is satisfied, the

(e) when the first of the following conditions is satisfied, the

(f) when the first of the following conditions is satisfied, the

(g) when the first of the following conditions is satisfied, the

(h) when the first of the following conditions is satisfied, the

(i) when the first of the following conditions is satisfied, the

(j) when the first of the following conditions is satisfied, the

(k) when the first of the following conditions is satisfied, the

(l) when the first of the following conditions is satisfied, the

(m) when the first of the following conditions is satisfied, the

(n) when the first of the following conditions is satisfied, the

(o) when the first of the following conditions is satisfied, the

(p) when the first of the following conditions is satisfied, the

(q) when the first of the following conditions is satisfied, the

(r) when the first of the following conditions is satisfied, the

(s) when the first of the following conditions is satisfied, the

(t) when the first of the following conditions is satisfied, the

(u) when the first of the following conditions is satisfied, the

(v) when the first of the following conditions is satisfied, the

(w) when the first of the following conditions is satisfied, the

(x) when the first of the following conditions is satisfied, the

(y) when the first of the following conditions is satisfied, the

(z) when the first of the following conditions is satisfied, the

PROOF

No. , 1975.

A BILL

With respect to the maintenance of standards of decency in the circulation and display of publications and certain other articles; to repeal the Obscene and Indecent Publications Act 1901; and for purposes connected therewith.

[MR WADDY—6 March, 1975.]

BE

Indecent Articles and Classified Publications.

BE it enacted by the Queen's Most Excellent Majesty, by
and with the advice and consent of the Legislative
Council and Legislative Assembly of New South Wales in
Parliament assembled, and by the authority of the same, as
follows :—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Indecent Articles and
Classified Publications Act, 1975".

Short
title.

2. (1) Section 1 and this section commence on the date
of assent to this Act.

Commence-
ment.

(2) Subject to subsection (1), this Act commences
on such day as may be appointed by the Governor in respect
thereof and as may be notified by proclamation published in
the Gazette.

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

4. This Act is divided, as follows :—

Division
of Act.

PART I.—PRELIMINARY—ss. 1–5.

20 PART II.—INDECENT ARTICLES—ss. 6–10.

PART III.—CLASSIFIED PUBLICATIONS—ss. 11–21.

PART IV.—GENERAL—ss. 22–30.

SCHEDULE.

Indecent Articles and Classified Publications.

5. (1) In this Act, except to the extent that the context or subject-matter otherwise indicates or requires— ^{Interpre-}
^{tation.}

“appointed day” means the day appointed and notified under section 2 (2);

5 “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

10 (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);

15 “Board” means the Publications Classification Board constituted under section 15;

“classification officer” means a person designated as a classification officer under section 11;

20 “classified publication” means an unrestricted publication, a restricted publication or a direct sale publication;

“classifying authority” means a classification officer, the Board or the District Court;

“direct sale publication” means—

25 (a) a publication in respect of which a classification under section 13 as a direct sale publication is in force; or

(b) a copy of such a publication;

“District

Indecent Articles and Classified Publications.

“District Court” means the District Court of New South Wales;

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

“publication” means a book, newspaper, magazine, periodical or like printed matter;

“publish” includes—

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

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

20 (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;

25 “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;

“restricted publication” means—

30 (a) a publication in respect of which a classification under section 13 as a restricted publication is in force; or

(b) a copy of such a publication;

“unrestricted

Indecent Articles and Classified Publications.

“unrestricted publication” means—

(a) a publication in respect of which a classification under section 13 as an unrestricted publication is in force; or

5 (b) a copy of such a publication.

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

10 (a) a person publishes a positive or negative photograph if he publishes a positive or negative picture made from it in a form visible by reflected or transmitted light or if he makes it available for use in making such a picture;

15 (b) a person publishes a record if he publishes the sound or picture recorded thereon, whether or not he publishes it in a distorted or altered form; and

20 (c) a person in the State, or who is resident in the State, publishes an article notwithstanding that the person to whom, or the place at which, he publishes the article is not within the State.

(3) 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.

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

(5)

Indecent Articles and Classified Publications.

5 (5) For the purposes of this Act, a person shall be deemed to have published an article in a street or public place if either he or the person to whom he publishes the article is, at the time of the publishing, in the street or public place.

PART II.

INDECENT ARTICLES.

6. (1) Subject to section 25, a person who publishes an indecent article contravenes this section and is liable, on 10 conviction on indictment—

Offence relating to publication of an indecent article.

(a) where the accused is a corporation—to a penalty not exceeding—

(i) \$2,000 for a first offence; or

15 (ii) \$4,000 for a second or subsequent offence;
or

(b) where the accused is not a corporation—to a penalty not exceeding—

(i) \$1,000 or imprisonment for twelve months for a first offence; or

20 (ii) \$2,000 or imprisonment for two years for a second or subsequent offence.

(2) Where—

(a) a person is charged before a stipendiary magistrate or two justices with a contravention of this section;

25 (b) the evidence for the prosecution is, in the opinion of the magistrate or justices, sufficient to put the accused on his trial;

(c)

Indecent Articles and Classified Publications.

(c) it appears to the magistrate or justices that the case may properly be disposed of summarily; and

(d) the accused consents to the case being disposed of summarily and does not desire to have the case determined by a jury,

5 the magistrate or justices may hear and determine the charge in a summary manner.

(3) The provisions of sections 479, 480 and 481 of the Crimes Act 1900 apply to and in respect of a case 10 disposed of in accordance with subsection (2) in the same way as they apply to and in respect of a case disposed of in accordance with section 476 of that Act.

(4) A person convicted summarily in accordance with subsections (2) and (3) is liable—

15 (a) where the accused is a corporation—to a penalty not exceeding—

(i) \$1,000 for a first offence; or

(ii) \$2,000 for a second or subsequent offence;
or

20 (b) where the accused is not a corporation—to a penalty not exceeding—

(i) \$500 or imprisonment for six months for a first offence; or

(ii) \$1,000 or imprisonment for twelve months for a second or subsequent offence.

25

Indecent Articles and Classified Publications.

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

Special warrant to search for and seize certain indecent articles.

- 5 (a) that an article (not being a publication) 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) that such an article has been published in, on or from specified premises,

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

(2) In the execution of a special warrant issued under
20 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 assistants to use, force in gaining the entry authorised by the special warrant.

25 8. (1) Where an article has been seized pursuant to a special warrant issued under section 7 (1), it shall be returned to the premises in or on which it was seized unless an information is laid against a person for a contravention of section 6 with respect to the article (or an article of which it is a
30 copy) or a member of the police force reports the seizure to a justice who shall thereupon issue his summons calling on the person who, at the time of the seizure of the article,

Summons to show cause against forfeiture of article may issue.

was

Indecent Articles and Classified Publications.

was occupying or using the premises entered by virtue of the warrant to appear before a court of petty sessions to show cause why the article and any other article seized pursuant to the warrant should not be forfeited to Her Majesty.

5 (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—

(a) such of the articles as are not claimed by the person summoned, or by some other person; or

10 (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.

9. A court of petty sessions shall order the return of an article seized pursuant to a warrant issued under section 7 (1)—
Return of seized article.

15 (a) if the court dismisses an information laid for a contravention of section 6 with respect to the article; or

20 (b) if, on the return before it of a summons issued pursuant to section 8 (1) with respect to the article, it finds that the article is not indecent.

10. (1) This section applies to a business an object of which is the sale or disposal of any article, material, commodity, 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)

Indecent Articles and Classified Publications.

(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
5 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
- 10 (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).

15 (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 pro-
20 fession, that ordinarily involves selling or disposing of, or advising on or prescribing the use of, any article, material, compound, preparation, device or other thing referred to in subsection (1).

(5) A person contravenes this section if, in or in
25 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
30 referred to in subsection (1).

Penalty

Indecent Articles and Classified Publications.

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.

PART III.

CLASSIFIED PUBLICATIONS.

11. (1) The Minister may, by order published in the *Classification Gazette*—
Classification officers.

10 (a) designate—

(i) the holder for the time being of a specified office, being an office tenable only by a person appointed or employed under the Public Service Act, 1902; or

15 (ii) a person so appointed or employed; or

(b) with the consent of a Minister of State for the Commonwealth, designate—

(i) the holder for the time being of a specified office, not being an office so tenable; or

20 (ii) a person not appointed or employed under that Act,

as a classification officer for the purposes of this Act.

12. (1) The Minister or a person authorised by him *Application for classification.*
 25 may apply to a classification officer for the classification of any publication.

(2)

Indecent Articles and Classified Publications.

(2) A person who proposes to publish a publication may apply to a classification officer for the classification of that publication.

5 (3) Where a classification officer classifies a publication pursuant to an application under subsection (1) or (2) and the applicant objects to the classification, the applicant may, not later than seven days after the classification takes effect, apply to the Board for classification of the publication.

10 (4) Where the Board classifies a publication pursuant to an application made under subsection (3) otherwise than by the Minister or a person authorised by him and the applicant objects to the classification, the applicant may, not later than seven days after the classification takes effect apply to the District Court, in accordance with rules of court, for
15 classification of the publication.

(5) Where a classification officer classifies a publication pursuant to an application under subsection (2) and the Minister objects to the classification, the Minister or a person authorised by him may apply at any time to the Board for
20 classification of the publication.

(6) Where a publication has been classified under section 13, an application, or further application, may not be made under subsection (2) in respect of the publication.

25 (7) Where a person requests the Minister to apply under subsection (1) for a further classification of a classified publication and, upon the application of the Minister, the publication is again classified, that application by the Minister shall, notwithstanding subsection (6), be deemed, for the purposes of subsections (3), (4) and (5), to have been duly
30 made by that person under subsection (2).

(8)

Indecent Articles and Classified Publications.

(8) The making of an application under this section does not affect any classification of a publication that—

- (a) is in force when the application is made; or
- (b) takes effect after the application is made and before the classification pursuant to the application takes effect.

13. (1) Where a publication is the subject of an application under section 12 to a classifying authority, the authority may—

Classifica-
tion of
publica-
tions.

- (a) classify the publication as an unrestricted publication; or
- (b) having regard—
 - (i) to the manner in which, and the extent to which, the publication relates to or depicts matters of sex, drug addiction, horror, crime, cruelty or violence; and
 - (ii) to the provisions of sections 17, 18 and 19, classify the publication as a restricted publication or a direct sale publication.

(2) If a classifying authority so directs when classifying a publication, the classification decided upon extends to any subsequent edition, series, number, instalment or issue of the publication notwithstanding any reconstruction (whether by way of alteration in title, change of subject, characters, story or other features, or in any other manner) of the publication.

14. (1) Where the Minister receives notice of a classification under section 13 (1), or of a direction under section 13 (2), with respect to a publication, he shall cause the classification or direction to be notified in the Gazette.

Gazettal of
classifica-
tion of
publica-
tion.

(2)

Indecent Articles and Classified Publications.

(2) Neither a classification of a publication under section 13 (1) nor a direction given under section 13 (2) has effect until it is notified under subsection (1).

(3) A notification in the Gazette that purports to be
5 a notification under subsection (1)—

- (a) is evidence that a publication specified therein has been classified under section 13 as is specified in the notification;
- 10 (b) is evidence that a direction specified therein with respect to a publication has been given with respect to the publication;
- (c) is evidence that any classification or direction specified therein is in force; and
- 15 (d) revokes any earlier such notification to the extent of any inconsistency.

(4) Where, but for this subsection, two classifications of a publication would take effect on the same day—

- 20 (a) a classification by the Board shall be deemed to take effect later than a classification by a classification officer; and
- (b) a classification by the District Court shall be deemed to take effect later than a classification by the Board.

25 **15.** (1) The Governor may appoint a Publications Publications Classification Board consisting of not less than five, and not more than seven, persons who shall have and may exercise Classifica- and perform the powers, authorities, duties and functions tion Board. conferred or imposed on the Board by or under this Act.

(2)

Indecent Articles and Classified Publications.

(2) Of the members of the Board—

(a) one shall be a recognised expert in literature, art, medicine or science; and

(b) one shall be a barrister or solicitor,

5 and, of the other members of the Board, one at least shall be a man and one at least shall be a woman.

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

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

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

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

(a) dies;

20 (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;

25 (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)

Indecent Articles and Classified Publications.

(d) resigns his office by writing under his hand addressed to the Minister;

(e) attains the age of sixty-five years; or

(f) is removed from office by the Governor.

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

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

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

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

20 (11) The powers, authorities, duties and functions conferred or imposed upon the Board may only be exercised or performed pursuant to a decision supported by a majority of votes at a duly convened meeting of the Board at which a quorum is present.

25 (12) If, at a meeting of the Board, 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
30 chairman may exercise and perform the powers, authorities, duties and functions conferred and imposed on the chairman by this Act.

(14)

Indecent Articles and Classified Publications.

(14) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment by the Governor of a member of the Board 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 Board is not, for the purposes of the Constitution Act, 1902, an office of profit under the Crown.

10 **16.** (1) The Board shall report to the Minister on any matter arising out of the administration of this Act that is referred to it by the Minister. Board to make certain reports to Minister.

(2) Where the Board is obliged under this section to make a report on any matter, a member of the Board 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

15 **17.** (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 publishes a restricted publication; or

20 (b) he has a restricted publication in his possession apparently for the purpose of publishing it in a street or public place (not being a shop).

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

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

30 (a) in a part of a shop that is not its window or entrance recess, he displays or exhibits a restricted publication to public view; or

Indecent Articles and Classified Publications.

(b) in any part of a shop (including its window or entrance recess) he renders a restricted publication readily accessible to the public.

(4) Subject to subsection (5), it is a defence to a
5 prosecution for a contravention of this section if it is proved
that the defendant took all such steps as could reasonably have
been taken to prevent any restricted publication being
exhibited, displayed or rendered accessible in the part of the
shop to which the charge relates to any person under the age
10 of eighteen years.

(5) Subsection (4) does not apply where a restricted
publication was displayed, exhibited or rendered accessible to
a person under the age of eighteen years unless it is also
proved that the person by whom the publication was dis-
15 played, exhibited or rendered accessible had reasonable
grounds for believing, and did believe, that the person under
that age was of or above that age.

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

(7) It is a defence to a prosecution for a contraven-
tion of this section 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 he sold, hired or offered
25 the restricted publication the subject of the charge was of or
above 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
30 a first offence and \$500 or imprisonment for six months for a
second or subsequent offence.

Indecent Articles and Classified Publications.

18. (1) A person contravenes this section if, in any part of a shop (including its window and any entrance recess), he displays or exhibits a direct sale publication to public view or renders a direct sale publication readily accessible to the public.

Offences in relation to direct sale publications.

(2) Except as provided by subsection (3), a person contravenes this section if he publishes a direct sale publication unless—

- 10 (a) the act that constitutes publishing is a sale or letting on hire of a single copy of the publication effected—
- (i) in a shop pursuant to an unsolicited request made by the purchaser or hirer present in the shop when the request is made; or
- 15 (ii) if the regulations so provide, otherwise than in a shop, street or public place, in such manner, and in compliance with such conditions, as may be prescribed;
- (b) the publishing is a publishing to one person only; and
- 20 (c) the person to whom the publication is published is, at the time of the publication, of or above the age of eighteen years.

(3) A person who publishes a direct sale publication does not contravene this section if he is of or above the age of 25 eighteen years and he publishes the publication in the ordinary course of business for the purpose of giving possession thereof to—

- (a) another person of or above that age whose business is or includes the publishing of publications; or
- 30 (b) a servant or agent, of or above that age, of that other person,

for use in the business of that other person in so far as that business includes the publishing of publications.

(4)

Indecent Articles and Classified Publications.

(4) Regulations made for the purposes of subsection (2) (a) may be made to differ in their application according to whether a sale or hiring takes place in a shop or elsewhere and according to such other matters as are specified in the regulations.

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.

19. (1) A person contravenes this section if, except to the extent provided by section 14 and the regulations, he publishes any advertising material of such a nature that a person may thereby be informed, whether by implication or otherwise—

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

(b) that an identifiable place or person may be resorted to for the purpose of perusing or obtaining a restricted or direct sale publication, whether or not the publication is identifiable.

(2) Regulations made for the purposes of subsection (1) may be made to differ in their application according to whether a publication is a restricted publication or a direct sale publication and according to such other matters as are specified in the regulations.

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.

Indecent Articles and Classified Publications.

20. Where a person has been convicted of an offence Forfeiture of certain publications. against this Act constituted by a contravention of section 17, 18 or 19 or where in respect of any person such an offence has been found by a court to have been proved, there shall
5 be forfeited to Her Majesty—

(a) where the contravention involved a restricted publication—all restricted publications that were;
or

10 (b) where the contravention involved a direct sale publication—all direct sale publications that were;
or

(c) where the contravention involved advertising material—all advertising material of the nature referred to in section 19 that was,

15 at the time of the commission of the offence in the possession or apparently under the control of that person.

21. (1) Where a member of the police force has Member of the police force may require certain particulars. reasonable cause to suspect that a person in a street or public place (including a shop) who is in possession of a restricted
20 publication or a direct sale 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
25 a reasonable time, evidence of the correctness of the age, name or address stated.

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

30 Penalty: \$100.

PART

Indecent Articles and Classified Publications.

PART IV.

GENERAL.

22. Where a corporation contravenes a provision of this Act, a person who, at the time of the contravention, was within the meaning of the Companies Act, 1961, a director of, or was a person concerned in the management of, the corporation shall, without affecting the liability of the corporation to be punished for the contravention, be deemed also to have contravened the provision and shall be liable to the penalty prescribed in the case of such a contravention by a person other than a corporation unless he satisfies the court that the provision was contravened by the corporation without his knowledge or that he used all due diligence to prevent the contravention by the corporation.

Liability of directors, etc., where provision contravened by corporation.

23. Except to the extent that this Act otherwise provides, proceedings for a contravention of a provision of this Act or the regulations, and proceedings on the return of a summons issued pursuant to section 8 (1), shall be heard and determined by a stipendiary magistrate sitting in petty sessions.

Proceedings to be before stipendiary magistrate, unless indictable.

24. In any proceedings in which indecency is in issue, 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.

Certain evidence may be admitted.

25. Proceedings may not be instituted against any person for publishing after the appointed day an obscene libel or an indecent article—

Certain proceedings prohibited.

(a) for the purposes of an application under section 12; or

(b) where the libel or article is, or is part of, a classified publication and that publication is not published in contravention of section 17, 18 or 19.

26.

Indecent Articles and Classified Publications.

26. Notwithstanding anything in any contract or agreement entered into before or after the appointed day, a distributor, bookseller, newsagent or other person is not liable for breach of contract by reason only of his rejecting 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—

Exoneration
from
liability
under
certain
contracts.

(a) the article is a restricted publication or a direct sale publication 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 contravention of a provision of 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 therefor, as soon as practicable after he becomes aware of the nature of the article.

27. (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—

Notice of
action.

- (a) the cause of action;
- (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.

Indecent Articles and Classified Publications.

(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 by the Minister to inspect the property damaged
5 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
10 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—

15 (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.

20 (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
25 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.

30 (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)

Indecent Articles and Classified Publications.

5 (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.

10 (7) Proceedings may not be instituted or maintained by or in favour of any person against a classification officer or any member of the Board or any other person acting under the direction of the Board or a classification officer in respect of any act done or omitted to be done bona fide in the execution of any power or authority conferred by this Act on the officer or the Board.

15 **28.** (1) 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. Savings and transitional provisions.

(2) Where—

20 (a) before the appointed day the Minister referred for the consideration of the State Advisory Committee on Publications constituted under the Acts repealed by this Act a matter arising out of the administration of the Acts repealed by this Act; or

25 (b) before or after that day the Minister received or receives a report by that Committee on a matter that, before that day, 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 16.

Indecent Articles and Classified Publications.

5 (3) Where a notification in the Gazette under section 33 of the Obscene and Indecent Publications Act 1901 was in force immediately before the appointed day, the publication to which it relates shall, until a classification of the publication pursuant to an application under section 12 (1) or (2) takes effect, be deemed to be a restricted publication.

10 (4) A notification in the Gazette that, immediately before the appointed day, was in force under section 35 of the Obscene and Indecent Publications Act 1901 shall be deemed to be a notification, published on that day under section 14, classifying the publication to which it relates as an unrestricted publication pursuant to an application under section 12 (1).

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

29. The provisions of sections 6, 17, 18 and 19 do not apply to or in respect of— Exemption for certain libraries.

20 (a) anything done in the execution of the Library of New South Wales Act, 1969; or

(b) a prescribed library, or a library of a prescribed class, in respect of which the prescribed conditions are complied with.

25 30. (1) The Governor may make regulations for or with respect to all matters that by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act. Regulations.

(2)

Indecent Articles and Classified Publications.

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations for or with respect to—

- 5 (a) applications under section 12 (1), (2) and (5);
 (b) the marking of restricted or direct sale publications;
 (c) the wrapping of restricted or direct sale publications.

(3) The regulations may impose a penalty not exceeding \$500 for a contravention thereof.

SCHEDULE.

Sec. 3.

| 10 | Citation. | Short title. | Extent of repeal. |
|----|-----------------|--|-------------------|
| | No. 12, 1901 .. | Obscene and Indecent Publications Act 1901. | The whole Act. |
| | No. 12, 1908 .. | Police Offences (Amendment) Act, 1908. | Part V. |
| 15 | No. 36, 1946 .. | Obscene and Indecent Publications (Amendment) Act, 1946. | The whole Act. |
| | No. 10, 1955 .. | Obscene and Indecent Publications (Amendment) Act, 1955. | The whole Act. |
| 20 | 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

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1975

- (1) The regulation may be made in accordance with the powers conferred by section 13(1)(a) and (b) of the Act.
- (2) Where the regulation is made in accordance with section 13(1)(c) of the Act, the regulation may be made in accordance with the powers conferred by section 13(1)(a) and (b) of the Act.
- (3) The regulation may be made in accordance with the powers conferred by section 13(1)(a) and (b) of the Act.

SCHEDULE

| No. | Description | Section of Act |
|-----|-------------|----------------|
| 1 | ... | ... |
| 2 | ... | ... |
| 3 | ... | ... |
| 4 | ... | ... |
| 5 | ... | ... |
| 6 | ... | ... |
| 7 | ... | ... |
| 8 | ... | ... |
| 9 | ... | ... |
| 10 | ... | ... |

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

R. E. WARD,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 20 March, 1975.*

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 32, 1975.

An Act with respect to the maintenance of standards of decency in the circulation and display of publications and certain other articles; to repeal the Obscene and Indecent Publications Act 1901; and for purposes connected therewith. [Assented to, 16th April, 1975.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

H. G. COATES,
Acting Chairman of Committees of the Legislative Assembly.

Indecent Articles and Classified Publications.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be cited as the "Indecent Articles and Classified Publications Act, 1975".

Commencement.

2. (1) Section 1 and this section commence on the date of assent to this Act.

(2) Subject to subsection (1), this Act commences on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Repeals.

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

Division of Act.

4. This Act is divided, as follows :—

PART I.—PRELIMINARY—*ss.* 1–5.

PART II.—INDECENT ARTICLES—*ss.* 6–10.

PART III.—CLASSIFIED PUBLICATIONS—*ss.* 11–21.

PART IV.—GENERAL—*ss.* 22–30.

SCHEDULE.

Indecent Articles and Classified Publications.

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

“appointed day” means the day appointed and notified under section 2 (2);

“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” means the Publications Classification Board constituted under section 15;

“classification officer” means a person designated as a classification officer under section 11;

“classified publication” means an unrestricted publication, a restricted publication or a direct sale publication;

“classifying authority” means a classification officer, the Board or the District Court;

“direct sale publication” means—

- (a) a publication in respect of which a classification under section 13 as a direct sale publication is in force; or
- (b) a copy of such a publication;

“District

Indecent Articles and Classified Publications.

“District Court” means the District Court of New South Wales;

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

“publication” means a book, newspaper, magazine, periodical or like printed matter;

“publish” includes—

- (a) distribute, disseminate, circulate, deliver, send, display, exhibit, lend for gain, exchange, barter, sell, offer for sale, let on hire and offer to let on hire;
- (b) have in possession or custody, or under control, for the purpose of doing an act referred to in paragraph (a);
- (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;

“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;

“restricted publication” means—

- (a) a publication in respect of which a classification under section 13 as a restricted publication is in force; or
- (b) a copy of such a publication;

“unrestricted

Indecent Articles and Classified Publications.

“unrestricted publication” means—

- (a) a publication in respect of which a classification under section 13 as an unrestricted publication is in force; or
- (b) a copy of such a publication.

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

- (a) a person publishes a positive or negative photograph if he publishes a positive or negative picture made from it in a form visible by reflected or transmitted light or if he makes it available for use in making such a picture;
- (b) a person publishes a record if he publishes the sound or picture recorded thereon, whether or not he publishes it in a distorted or altered form; and
- (c) a person in the State, or who is resident in the State, publishes an article notwithstanding that the person to whom, or the place at which, he publishes the article is not within the State.

(3) 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.

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

(5)

Indecent Articles and Classified Publications.

(5) For the purposes of this Act, a person shall be deemed to have published an article in a street or public place if either he or the person to whom he publishes the article is, at the time of the publishing, in the street or public place.

PART II.

INDECENT ARTICLES.

Offence relating to publication of an indecent article.

6. (1) Subject to section 25, a person who publishes an indecent article contravenes this section and is liable, on conviction on indictment—

(a) where the accused is a corporation—to a penalty not exceeding—

(i) \$2,000 for a first offence; or

(ii) \$4,000 for a second or subsequent offence;
or

(b) where the accused is not a corporation—to a penalty not exceeding—

(i) \$1,000 or imprisonment for twelve months for a first offence; or

(ii) \$2,000 or imprisonment for two years for a second or subsequent offence.

(2) Where—

(a) a person is charged before a stipendiary magistrate or two justices with a contravention of this section;

(b) the evidence for the prosecution is, in the opinion of the magistrate or justices, sufficient to put the accused on his trial;

(c)

Indecent Articles and Classified Publications.

(c) it appears to the magistrate or justices that the case may properly be disposed of summarily; and

(d) the accused consents to the case being disposed of summarily and does not desire to have the case determined by a jury,

the magistrate or justices may hear and determine the charge in a summary manner.

(3) The provisions of sections 479, 480 and 481 of the Crimes Act 1900 apply to and in respect of a case disposed of in accordance with subsection (2) in the same way as they apply to and in respect of a case disposed of in accordance with section 476 of that Act.

(4) A person convicted summarily in accordance with subsections (2) and (3) is liable—

(a) where the accused is a corporation—to a penalty not exceeding—

(i) \$1,000 for a first offence; or

(ii) \$2,000 for a second or subsequent offence;
or

(b) where the accused is not a corporation—to a penalty not exceeding—

(i) \$500 or imprisonment for six months for a first offence; or

(ii) \$1,000 or imprisonment for twelve months for a second or subsequent offence.

Indecent Articles and Classified Publications.

Special
warrant to
search for
and seize
certain
indecent
articles.

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

- (a) that an article (not being a publication) 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) that such an article has been published in, on or from specified premises,

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

Summons to
show cause
against
forfeiture
of article
may issue.

8. (1) Where an article has been seized pursuant to a special warrant issued under section 7 (1), it shall be returned to the premises in or on which it was seized unless, not later than one month after the seizure, an information is laid against a person for a contravention of section 6 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 who, at the time of the seizure of the article, was occupying or using

the

Indecent Articles and Classified Publications.

the premises entered by virtue of the warrant to appear before a court of petty sessions to show cause why the article and any other article seized pursuant to the warrant should not be forfeited to Her Majesty.

(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—

- (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.

9. A court of petty sessions shall order the return of an article seized pursuant to a warrant issued under section 7 (1)—

Return of seized article.

- (a) if the court dismisses an information laid for a contravention of section 6 with respect to the article; or
- (b) if, on the return before it of a summons issued pursuant to section 8 (1) with respect to the article, it finds that the article is not indecent.

10. (1) This section applies to a business (other than a prescribed business, or a business of a prescribed class, in respect of which the prescribed conditions are complied with) 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)

Indecent Articles and Classified Publications.

(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) 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, device or other thing 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

Indecent Articles and Classified Publications.

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.

PART III.

CLASSIFIED PUBLICATIONS.

11. The Minister may, by order published in the *Classification Gazette*—
officers.

(a) designate—

(i) the holder for the time being of a specified office, being an office tenable only by a person appointed or employed under the Public Service Act, 1902; or

(ii) a person so appointed or employed; or

(b) with the consent of a Minister of State for the Commonwealth, designate—

(i) the holder for the time being of a specified office, not being an office so tenable; or

(ii) a person not appointed or employed under that Act,

as a classification officer for the purposes of this Act.

12. (1) The Minister or a person authorised by him *Application for classification.*
may apply to a classification officer for the classification of any publication.

(2)

Indecent Articles and Classified Publications.

(2) A person who proposes to publish a publication may apply to a classification officer for the classification of that publication.

(3) Where a classification officer classifies a publication pursuant to an application under subsection (1) or (2) and the applicant objects to the classification, the applicant may, not later than seven days after the classification takes effect, apply to the Board for classification of the publication.

(4) Where the Board classifies a publication pursuant to an application made under subsection (3) otherwise than by the Minister or a person authorised by him and the applicant objects to the classification, the applicant may, not later than seven days after the classification takes effect apply to the District Court, in accordance with rules of court, for classification of the publication.

(5) Where a classification officer classifies a publication pursuant to an application under subsection (2) and the Minister objects to the classification, the Minister or a person authorised by him may apply at any time to the Board for classification of the publication.

(6) Where a publication has been classified under section 13, an application, or further application, may not be made under subsection (2) in respect of the publication.

(7) Where a person requests the Minister to apply under subsection (1) for a further classification of a classified publication and, upon the application of the Minister, the publication is again classified, that application by the Minister shall, notwithstanding subsection (6), be deemed, for the purposes of subsections (3), (4) and (5), to have been duly made by that person under subsection (2).

(8)

Indecent Articles and Classified Publications.

(8) The making of an application under this section does not affect any classification of a publication that—

- (a) is in force when the application is made; or
- (b) takes effect after the application is made and before the classification pursuant to the application takes effect.

13. (1) Where a publication is the subject of an application under section 12 to a classifying authority, the authority may—

Classifica-
tion of
publica-
tions.

- (a) classify the publication as an unrestricted publication; or
- (b) having regard—
 - (i) to the manner in which, and the extent to which, the publication relates to or depicts matters of sex, drug addiction, horror, crime, cruelty or violence; and
 - (ii) to the provisions of sections 17, 18 and 19, classify the publication as a restricted publication or a direct sale publication.

(2) If a classifying authority so directs when classifying a publication, the classification decided upon extends to any subsequent edition, series, number, instalment or issue of the publication notwithstanding any reconstruction (whether by way of alteration in title, change of subject, characters, story or other features, or in any other manner) of the publication.

14. (1) Where the Minister receives notice of a classification under section 13 (1), or of a direction under section 13 (2), with respect to a publication, he shall cause the classification or direction to be notified in the Gazette.

Gazettel of
classifica-
tion of
publica-
tion.

(2)

Indecent Articles and Classified Publications.

(2) Neither a classification of a publication under section 13 (1) nor a direction given under section 13 (2) has effect until it is notified under subsection (1).

(3) A notification in the Gazette that purports to be a notification under subsection (1)—

- (a) is evidence that a publication specified therein has been classified under section 13 as is specified in the notification;
- (b) is evidence that a direction specified therein with respect to a publication has been given with respect to the publication;
- (c) is evidence that any classification or direction specified therein is in force; and
- (d) revokes any earlier such notification to the extent of any inconsistency.

(4) Where, but for this subsection, two classifications of a publication would take effect on the same day—

- (a) a classification by the Board shall be deemed to take effect later than a classification by a classification officer; and
- (b) a classification by the District Court shall be deemed to take effect later than a classification by the Board.

Publica-
tions
Classifica-
tion Board.

15. (1) The Governor may appoint a Publications Classification Board consisting of not less than five, 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 Board by or under this Act.

(2)

Indecent Articles and Classified Publications.

(2) Of the members of the Board—

(a) one shall be a recognised expert in literature, art, medicine or science; and

(b) one shall be a barrister or solicitor,

and, of the other members of the Board, one at least shall be a man and one at least shall be a woman.

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

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

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

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

(a) dies;

(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;

(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)

Indecent Articles and Classified Publications.

- (d) resigns his office by writing under his hand addressed to the Minister;
- (e) attains the age of sixty-five years; or
- (f) is removed from office by the Governor.

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

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

(9) Meetings of the Board 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 Board constitutes a quorum for the purposes of a meeting of the Board.

(11) The powers, authorities, duties and functions conferred or imposed upon the Board may only be exercised or performed pursuant to a decision supported by a majority of votes at a duly convened meeting of the Board at which a quorum is present.

(12) If, at a meeting of the Board, 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 chairman may exercise and perform the powers, authorities, duties and functions conferred and imposed on the chairman by this Act.

(14)

Indecent Articles and Classified Publications.

(14) The provisions of the Public Service Act, 1902, do not apply to or in respect of the appointment by the Governor of a member of the Board 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 Board is not, for the purposes of the Constitution Act, 1902, an office of profit under the Crown.

16. (1) The Board shall report to the Minister on any matter arising out of the administration of this Act that is referred to it by the Minister. Board to make certain reports to Minister.

(2) Where the Board is obliged under this section to make a report on any matter, a member of the Board 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.

17. (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 publishes a restricted publication; or
- (b) he has a restricted publication in his possession apparently for the purpose of publishing it in a street or public place (not being a shop).

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

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

- (a) in a part of a shop that is not its window or entrance recess, he displays or exhibits a restricted publication to public view; or

(b)

Indecent Articles and Classified Publications.

(b) in any part of a shop (including its window or entrance recess) he renders a restricted publication readily accessible to the public.

(4) Subject to subsection (5), it is a defence to a prosecution for a contravention of this section if it is proved that the defendant took all such steps as could reasonably have been taken to prevent any restricted publication being exhibited, displayed or rendered accessible in the part of the shop to which the charge relates to any person under the age of eighteen years.

(5) Subsection (4) does not apply where a restricted publication was displayed, exhibited or rendered accessible to a person under the age of eighteen years unless it is also proved that the person by whom the publication was displayed, exhibited or rendered accessible had reasonable grounds for believing, and did believe, that the person under that age was of or above that age.

(6) A person contravenes this section if he sells, 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) It is a defence to a prosecution for a contravention of this section 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 he sold, hired or offered the restricted publication the subject of the charge was of or above 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.

Indecent Articles and Classified Publications.

18. (1) A person contravenes this section if, in any part of a shop (including its window and any entrance recess), he displays or exhibits a direct sale publication to public view or renders a direct sale publication readily accessible to the public. Offences in relation to direct sale publications.

(2) Except as provided by subsection (3), a person contravenes this section if he publishes a direct sale publication unless—

- (a) the act that constitutes publishing is a sale or letting on hire of a single copy of the publication effected—
 - (i) in a shop pursuant to an unsolicited request made by the purchaser or hirer present in the shop when the request is made; or
 - (ii) if the regulations so provide, otherwise than in a shop, street or public place,in such manner, and in compliance with such conditions, as may be prescribed;
- (b) the publishing is a publishing to one person only; and
- (c) the person to whom the publication is published is, at the time of the publication, of or above the age of eighteen years.

(3) A person who publishes a direct sale publication does not contravene this section if he is of or above the age of eighteen years and he publishes the publication in the ordinary course of business for the purpose of giving possession thereof to—

- (a) another person of or above that age whose business is or includes the publishing of publications; or
 - (b) a servant or agent, of or above that age, of that other person,
- for use in the business of that other person in so far as that business includes the publishing of publications.

(4)

Indecent Articles and Classified Publications.

(4) Regulations made for the purposes of subsection (2) (a) may be made to differ in their application according to whether a sale or hiring takes place in a shop or elsewhere and according to such other matters as are specified in the regulations.

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.

Advertising
relating to
certain
publications.

19. (1) A person contravenes this section if, except to the extent provided by section 14 and the regulations, he publishes any advertising material of such a nature that a person may thereby be informed, whether by implication or otherwise—

- (a) that a publication is a restricted publication or a direct sale publication; or
- (b) that an identifiable place or person may be resorted to for the purpose of perusing or obtaining a restricted or direct sale publication, whether or not the publication is identifiable.

(2) Regulations made for the purposes of subsection (1) may be made to differ in their application according to whether a publication is a restricted publication or a direct sale publication and according to such other matters as are specified in the regulations.

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.

Indecent Articles and Classified Publications.

20. Where a person has been convicted of an offence against this Act constituted by a contravention of section 17, 18 or 19 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—

Forfeiture
of certain
publications.

- (a) where the contravention involved a restricted publication—all restricted publications that were;
or
- (b) where the contravention involved a direct sale publication—all direct sale publications that were;
or
- (c) where the contravention involved advertising material—all advertising material of the nature referred to in section 19 that was,

at the time of the commission of the offence in the possession or apparently under the control of that person.

21. (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 or a direct sale 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).

Penalty: \$100.

PART

Indecent Articles and Classified Publications.

PART IV.

GENERAL.

Liability of directors, etc., where provision contravened by corporation.

22. Where a corporation contravenes a provision of this Act, a person who, at the time of the contravention, was within the meaning of the Companies Act, 1961, a director of, or was a person concerned in the management of, the corporation shall, without affecting the liability of the corporation to be punished for the contravention, be deemed also to have contravened the provision and shall be liable to the penalty prescribed in the case of such a contravention by a person other than a corporation unless he satisfies the court that the provision was contravened by the corporation without his knowledge or that he used all due diligence to prevent the contravention by the corporation.

Proceedings to be before stipendiary magistrate, unless indictable.

23. Except to the extent that this Act otherwise provides, proceedings for a contravention of a provision of this Act or the regulations, and proceedings on the return of a summons issued pursuant to section 8 (1), shall be heard and determined by a stipendiary magistrate sitting in petty sessions.

Certain evidence may be admitted.

24. In any proceedings in which indecency is in issue, 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.

Certain proceedings prohibited.

25. Proceedings may not be instituted against any person for publishing after the appointed day an obscene libel or an indecent article—

- (a) for the purposes of an application under section 12; or
- (b) where the libel or article is, or is part of, a classified publication and that publication is not published in contravention of section 17, 18 or 19.

Indecent Articles and Classified Publications.

26. Notwithstanding anything in any contract or agreement entered into before or after the appointed day, a distributor, bookseller, newsagent or other person is not liable for breach of contract by reason only of his rejecting 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—

Exoneration
from
liability
under
certain
contracts.

- (a) the article is a restricted publication or a direct sale publication 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 contravention of a provision of 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 therefor, as soon as practicable after he becomes aware of the nature of the article.

27. (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—

Notice of
action.

- (a) the cause of action;
- (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)

Indecent Articles and Classified Publications.

(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 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)

Indecent Articles and Classified Publications.

(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) Proceedings may not be instituted or maintained by or in favour of any person against a classification officer or any member of the Board or any other person acting under the direction of the Board or a classification officer in respect of any act done or omitted to be done bona fide in the execution of any power or authority conferred by this Act on the officer or the Board.

28. (1) 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.

Savings and transitional provisions.

(2) Where—

- (a) before the appointed day the Minister referred for the consideration of the State Advisory Committee on Publications constituted under the Acts repealed by this Act a matter arising out of the administration of the Acts repealed by this Act; or
- (b) before or after that day the Minister received or receives a report by that Committee on a matter that, before that day, 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 16.

(3)

Indecent Articles and Classified Publications.

(3) Where a notification in the Gazette under section 33 of the Obscene and Indecent Publications Act 1901 was in force immediately before the appointed day, the publication to which it relates shall, until a classification of the publication pursuant to an application under section 12 (1) or (2) takes effect, be deemed to be a restricted publication.

(4) A notification in the Gazette that, immediately before the appointed day, was in force under section 35 of the Obscene and Indecent Publications Act 1901 shall be deemed to be a notification, published on that day under section 14, classifying the publication to which it relates as an unrestricted publication pursuant to an application under section 12 (1).

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

Exemption
for certain
libraries.

29. The provisions of sections 6, 17, 18 and 19 do not apply to or in respect of—

- (a) anything done in the execution of the Library of New South Wales Act, 1969; or
- (b) a prescribed library, or a library of a prescribed class, in respect of which the prescribed conditions are complied with.

Regulations.

30. (1) The Governor may make regulations for or with respect to all matters that by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.

(2)

Indecent Articles and Classified Publications.

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations for or with respect to—

- (a) applications under section 12 (1), (2) and (5);
- (b) the marking of restricted or direct sale publications;
- (c) the wrapping of restricted or direct sale publications.

(3) The regulations may impose a penalty not exceeding \$500 for a contravention thereof.

SCHEDULE.

Sec. 3.

| Citation. | Short title. | Extent of repeal. |
|-----------------|--|-------------------|
| No. 12, 1901 .. | Obscene and Indecent Publications Act 1901. | The whole Act. |
| No. 12, 1908 .. | Police Offences (Amendment) Act, 1908. | Part V. |
| No. 36, 1946 .. | Obscene and Indecent Publications (Amendment) Act, 1946. | The whole Act. |
| 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. |

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
Lieutenant-Governor.

*Government House,
Sydney, 16th April, 1975.*

