

**INDECENT ARTICLES AND CLASSIFIED PUBLICATIONS
(AMENDMENT) BILL, 1984**

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the Film and Video Tape Classification Bill, 1984.

The objects of this Bill are to amend the Indecent Articles and Classified Publications Act, 1975 ("the Act")—

- (a) to enable a classifying authority to classify a publication of its own motion as well as on the application of certain persons (Schedule 1 (8)—proposed section 13);
- (b) to provide that a classifying authority may classify a publication as—
 - (i) an unrestricted publication;
 - (ii) a category 1 restricted publication (instead of as a restricted publication);
 - (iii) a category 2 restricted publication (instead of as a direct sale publication); or
 - (iv) a prohibited publication (which includes a child pornography publication),and to specify the matters to which regard shall be had in making a classification (Schedule 1 (8)—proposed section 13);
- (c) to provide that a classifying authority shall classify a publication as a prohibited publication if the publication—
 - (i) is a child pornography publication;
 - (ii) describes or depicts an act of bestiality;
 - (iii) contains a detailed and gratuitous description or depiction of an act of significant cruelty;
 - (iv) contains an explicit and gratuitous description or depiction of an act of sexual violence;

- (v) promotes, incites or encourages the use of hard drugs; or
 - (vi) promotes, incites or encourages terrorism,
- (Schedule 1 (8)—proposed section 13);
- (d) to specify the conditions which apply to the sale, delivery, exhibition, display, identification and packaging of category 1 restricted publications (Schedule 1 (9)—proposed section 17);
 - (e) to specify the conditions which apply to the sale, delivery, exhibition, display, identification and packaging of category 2 restricted publications (Schedule 1 (9)—proposed section 18);
 - (f) to prohibit the publication of a category 1 restricted publication otherwise than in accordance with the conditions applicable to that publication (Schedule 1 (9)—proposed section 18A (1));
 - (g) to prohibit the publication of a category 2 restricted publication otherwise than in accordance with the conditions applicable to that publication (Schedule 1 (9)—proposed section 18A (2));
 - (h) to provide a defence to a prosecution for the offence of publishing a category 1 restricted publication or a category 2 restricted publication where the offence is alleged to have been committed with respect to a person who had not attained the age of 18 years if the defendant proves—
 - (i) that the defendant took all reasonable steps to avoid being guilty of the offence; or
 - (ii) that the defendant believed on reasonable grounds that the person had attained the age of 18 years,
 (Schedule 1 (9)—proposed section 18A (3));
 - (i) to make it an offence for a person to publish a prohibited publication or have possession of a prohibited publication apparently for the purpose of publishing it (Schedule 1 (9)—proposed section 18B);
 - (j) to prohibit the publication, otherwise than in a restricted publications area, of an advertisement which indicates—
 - (i) that a publication is a category 1 restricted publication, a category 2 restricted publication or a prohibited publication; or
 - (ii) that an identifiable person or place may be resorted to for the purpose of perusing or obtaining a publication referred to in subparagraph (i),
 (Schedule 1 (9)—proposed section 19);
 - (k) to re-enact the forfeiture provisions contained in section 20 of the Act so as to apply those provisions to the classifications for publications referred to in paragraph (b) (Schedule 1 (9)—proposed section 20);
 - (l) to increase penalties (Schedule 1 (3), (5) and (14) (b)); and

**INDECENT ARTICLES AND CLASSIFIED PUBLICATIONS
(AMENDMENT) BILL, 1984**

No. , 1984.

A BILL FOR

An Act to amend the Indecent Articles and Classified Publications Act, 1975, to make further provision with respect to the classification and supply of certain publications.

Indecent Articles and Classified Publications (Amendment) 1984

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:—

5 Short title.

1. This Act may be cited as the "Indecent Articles and Classified Publications (Amendment) Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

10 (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Indecent Articles and Classified Publications Act, 1975, is 15 referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

20 Amendment of Act No. 32, 1975.

5. The Principal Act is amended in the manner set forth in Schedule 1.

Savings, transitional and other provisions.

6. Schedule 2 has effect.

SCHEDULE 1.

(Sec. 5.)

5 AMENDMENTS TO THE PRINCIPAL ACT.

- (1) Section 4—

Omit the section.

- (2) (a) Section 5 (1), definitions of “category 1 restricted publication”, “category 2 restricted publication”—

10 After the definition of “Board”, insert:—

“category 1 restricted publication” means—

- (a) a publication in respect of which a classification under section 13 as a category 1 restricted publication is in force; or

15 (b) a copy of such a publication;

“category 2 restricted publication” means—

- (a) a publication in respect of which a classification under section 13 as a category 2 restricted publication is in force; or

20 (b) a copy of such a publication;

- (b) Section 5 (1), definition of “child pornography publication”—
-
- Omit the definition.

Indecent Articles and Classified Publications (Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 5 (1), definition of “classified publication”—

Omit the definition, insert instead:—

5 “classified publication” means an unrestricted publication, a category 1 restricted publication, a category 2 restricted publication or a prohibited publication;

(d) Section 5 (1), definition of “direct sale publication”—

Omit the definition.

10 (e) Section 5 (1), definitions of “prohibited publication”, “public place”—

After the definition of “premises”, insert: —

“prohibited publication” means—

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

(b) a copy of such a publication;

20 “public place” means any place open to the public, whether on payment or the provision of any other consideration or otherwise, and includes a shop, stall, vehicle or other place to which persons are invited or permitted to resort to obtain, view or inspect goods or to obtain a service;

(f) Section 5 (1), definition of “publication”—

25 After “matter”, insert “and includes photographs, posters, greeting cards and other pictorial matter”.

(g) Section 5 (1), definition of “restricted publication”—

Omit the definition.

*Indecent Articles and Classified Publications (Amendment) 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (h) Section 5 (1), definitions of “restricted publications area”, “sell”—

5 Before the definition of “unrestricted publication”, insert:—

“restricted publications area” means any premises constructed, conducted and managed in accordance with the prescribed requirements;

10 “sell” means sell by wholesale or retail, whether by cash, on terms or otherwise, and includes barter, exchange, supply for profit, let on hire, offer for sale or to let on hire, receive for sale or to let on hire, have in possession for sale or to let on hire, expose for sale or to let on hire, send, forward or deliver for sale or to let on hire and
15 cause, suffer or allow to be sold or to be let on hire, offered or exposed for sale or to be let on hire;

- (i) Section 5 (3)—

Omit the subsection, insert instead:—

20 (3) A film within the meaning of the Film and Video Tape Classification Act, 1984, that would, but for this subsection, be an indecent article is not an indecent article if it is classified, or exempted from classification, under that Act.

- (3) (a) Section 6 (1) (a), (b)—

Omit the paragraphs, insert instead:—

- 25 (a) where the accused is a corporation—to a penalty not exceeding \$10,000; or
(b) where the accused is not a corporation—to a penalty not exceeding \$4,000 or imprisonment for 2 years.

*Indecent Articles and Classified Publications (Amendment) 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 6 (4) (a), (b)—

Omit the paragraphs, insert instead:—

- 5 (a) where the accused is a corporation—to a penalty not exceeding \$5,000; or
- (b) where the accused is not a corporation—to a penalty not exceeding \$2,000 or imprisonment for 2 years.

(4) (a) Section 7 (1) (a)—

10 Omit the paragraph, insert instead:—

- (a) that an article, being—
- (i) a prohibited publication; or
- (ii) an article (other than a category 1 restricted publication or a category 2 restricted publication) that may reasonably be suspected of being an indecent article,
- 15 is kept in or on specified premises for the purpose of being published; or

(b) Section 7 (1)—

20 Omit “any articles (other than publications) found therein or thereon that may reasonably be suspected of being indecent articles”, insert instead “any such articles found therein or thereon”.

(5) Section 10 (5)—

25 Omit:—

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.

*Indecent Articles and Classified Publications (Amendment) 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

Insert instead:—

5 Penalty: \$5,000 in the case of a corporation and \$2,000 or imprisonment for 12 months in any other case.

(6) Sections 11 (a) (i), 15 (14)—

Omit “Public Service Act, 1902” wherever occurring, insert instead “Public Service Act, 1979”.

(7) Sections 12 (6), 13B, 14—

10 Omit “or 13A” wherever occurring.

(8) Sections 13, 13A—

Omit the sections, insert instead:—

Classification of publications.

15 13. (1) A classifying authority may, of its own motion, and shall, on an application under section 12, consider the classification to be assigned to a publication.

(2) Except as provided by subsection (3), a classifying authority may—

(a) classify a publication as an unrestricted publication; or

20 (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

25 (ii) to the provisions of sections 17, 18, 18A and 18B, classify a publication as a category 1 restricted publication or a category 2 restricted publication.

*Indecent Articles and Classified Publications (Amendment) 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Where the classifying authority is of the opinion that a publication—

- 5 (a) contains indecent matter that depicts, whether by photograph or in any other pictorial manner, a person who is, or who is apparently, under the age of 16 years and who—
- 10 (i) is engaged in an activity, including the activity of posing, of a sexual nature; or
- (ii) is in the presence of another person who is so engaged;
- (b) describes, depicts, expresses, or otherwise deals with, sexual activity of any kind between a human being and an animal;
- 15 (c) contains a detailed and gratuitous description or depiction of an act of significant cruelty;
- (d) contains an explicit and gratuitous description or depiction of an act of sexual violence;
- (e) promotes, incites or encourages the use of hard drugs; or
- 20 (f) promotes, incites or encourages terrorism within the meaning of the Australian Security Intelligence Organization Act 1979 of the Commonwealth,

the classifying authority shall classify the publication as a prohibited publication.

(9) Sections 17–20—

25 Omit the sections, insert instead:—

Conditions relating to category 1 restricted publications.

17. The following conditions apply in relation to a category 1 restricted publication:—

- 30 (a) the publication shall not be sold or delivered to a person who has not attained the age of 18 years (other than by a parent or guardian of the person);

*Indecent Articles and Classified Publications (Amendment) 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) the publication shall not be exhibited or displayed in a public place unless the publication is contained in a sealed package;
- 5 (c) where the sealed package referred to in paragraph (b) is made of transparent material—the publication shall bear the prescribed markings;
- 10 (d) where the sealed package referred to in paragraph (b) is made of opaque material—both the publication and the package shall bear the prescribed markings.

Conditions relating to category 2 restricted publications.

18. The following conditions apply in relation to a category 2 restricted publication:—

- 15 (a) the publication shall not be sold or delivered to a person who has not attained the age of 18 years (other than by the parent or guardian of the person);
- (b) the publication shall not be exhibited or displayed other than in a restricted publications area;
- 20 (c) the publication shall not be sold or delivered to a person unless the publication bears the prescribed markings;
- (d) the publication shall not be sold or delivered to a person who has not made a direct request for the publication;
- 25 (e) the publication shall not be sold or delivered to a person unless the publication is contained in a package made of plain, opaque material.

Offences: category 1 and 2 restricted publications.

18A. (1) A person shall not publish or cause or permit to be published a category 1 restricted publication otherwise than in accordance with the conditions applicable to that publication.

- 30 Penalty: \$5,000 in the case of a corporation and \$1,000 or imprisonment for 12 months in any other case.

*Indecent Articles and Classified Publications (Amendment) 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 (2) A person shall not publish or cause or permit to be published a category 2 restricted publication otherwise than in accordance with the conditions applicable to that publication.

Penalty: \$10,000 in the case of a corporation and \$2,000 or imprisonment for 2 years in any other case.

10 (3) It is a defence to a prosecution for an offence under subsection (1) or (2) where the offence is alleged to have been committed with respect to a person who had not attained the age of 18 years as at the date of the alleged offence if the defendant proves—

(a) that the defendant took all such steps as were reasonable in the circumstances to avoid being guilty of the alleged offence; or

15 (b) that the defendant or the defendant's servant or agent had reasonable grounds for believing, and did in fact believe, that the person in respect of whom the alleged offence was committed had attained the age of 18 years as at the date of the alleged offence.

20 **Offences: prohibited publications.**

18B. A person shall not—

(a) publish a prohibited publication; or

(b) have possession of a prohibited publication apparently for the purpose of publishing it.

25 Penalty: \$15,000 in the case of a corporation and \$4,000 or imprisonment for 2 years in any other case.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Advertising relating to certain publications.**

5 19. (1) Except to the extent provided by this section, section 14 and the regulations, a person shall not publish any advertising material of such a nature that a person may thereby be informed, whether by implication or otherwise—

- (a) that the publication is a classified publication, other than an unrestricted publication; or
- 10 (b) that an identifiable place or person may be resorted to for the purpose of perusing or obtaining a classified publication, other than an unrestricted publication, whether or not the publication is identifiable.

15 Penalty: \$5,000 in the case of a corporation and \$1,000 or imprisonment for 12 months in any other case.

(2) It is not an offence under subsection (1) for a person to publish in a restricted publications area any advertising material in respect of a category 1 restricted publication or a category 2 restricted publication.

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

25 Forfeiture of certain publications.

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

- 30 (a) where the contravention involved a category 1 restricted publication—all category 1 restricted publications that were;

*Indecent Articles and Classified Publications (Amendment) 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) where the contravention involved a category 2 restricted publication—all category 2 restricted publications that were;
- 5 (c) where the contravention involved a prohibited publication—
all prohibited publications that were; or
- (d) where the contravention involved advertising material—all
advertising material of the nature referred to in section 19 (1)
that was,
- 10 at the time of the commission of the offence in the possession or
apparently under the control of that person.
- (10) (a) Section 21 (1)—
Omit “(including a shop)”.
- (b) Section 21 (1)—
15 Omit “restricted publication or a direct sale publication”, insert
instead “category 1 restricted publication or a category 2
restricted publication”.
- (11) (a) Section 25 (b)—
20 Omit “restricted publication or a direct sale publication”, insert
instead “category 1 restricted publication or a category 2
restricted publication”.
- (b) Section 25 (b)—
Omit “section 17, 18 or 19”, insert instead “section 18A or
19”.
- 25 (12) Section 26 (a)—
Omit “a restricted publication, a direct sale publication or a child
pornography publication”, insert instead “a category 1 restricted
publication, a category 2 restricted publication or a prohibited
publication”.

*Indecent Articles and Classified Publications (Amendment) 1984*SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(13) Section 29—

Omit “17, 18”, insert instead “18A, 18B”.

5 (14) (a) Section 30 (2)—

Omit “restricted or direct sale publications” wherever occurring, insert instead “category 1 restricted publications or category 2 restricted publications”.

(b) Section 30 (3)—

10 Omit “\$500”, insert instead “\$1,000”.

SCHEDULE 2.

(Sec. 6.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

15 1. In this Schedule, “appointed day” means the day appointed and notified under section 2 (2).

Validation of classification of certain publications.

20 2. The classification of a publication under section 13 of the Principal Act before the appointed day is not invalid by reason that an application for the classification of the publication was not made under section 12 of the Principal Act.

Classification of publications.

25 3. (1) A publication the classification of which was in force immediately before the appointed day under section 13 of the Principal Act, as so in force, shall be deemed to be a classified publication under section 13 of the Principal Act, as amended by this Act.

*Indecent Articles and Classified Publications (Amendment) 1984*SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

- (2) A publication referred to in subclause (1) shall be deemed—
- 5 (a) in the case of a restricted publication within the meaning of the Principal Act, as in force immediately before the appointed day—to be a category 1 restricted publication within the meaning of the Principal Act, as amended by this Act;
- 10 (b) in the case of a direct sale publication within the meaning of the Principal Act, as so in force—to be a category 2 restricted publication within the meaning of the Principal Act, as so amended; and
- (c) in the case of a child pornography publication within the meaning of the Principal Act, as so in force—to be a prohibited publication within the meaning of the Principal Act, as so amended.

Construction of references to classification of publications.

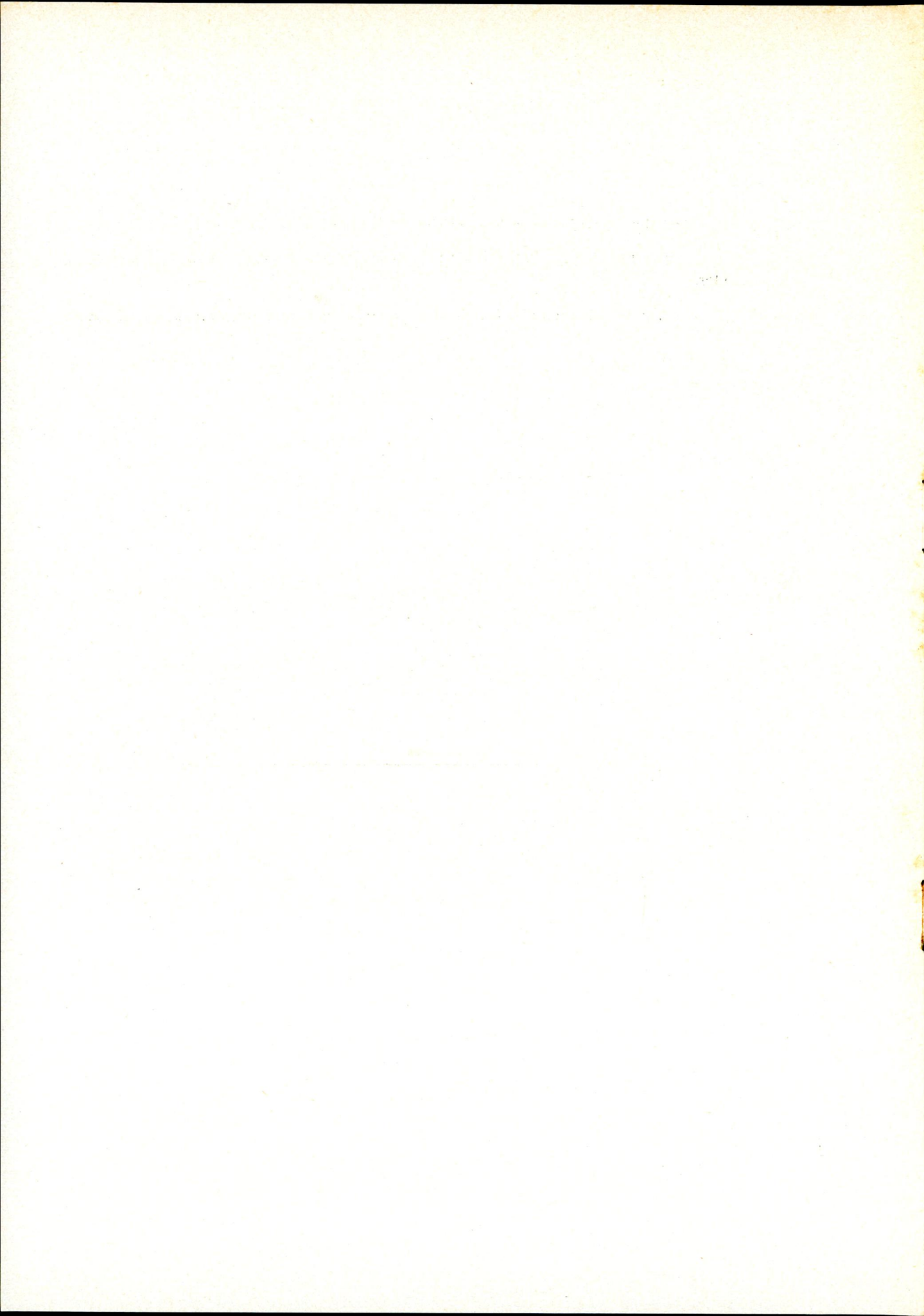
- 15 4. On and from the appointed day, a reference in any other Act, or in any regulation, by-law or other statutory instrument or in any other document, whether of the same or of a different kind, to—
- 20 (a) a restricted publication within the meaning of the Principal Act, as in force immediately before the appointed day, shall be read and construed as a reference to a category 1 restricted publication within the meaning of the Principal Act, as amended by this Act;
- (b) a direct sale publication within the meaning of the Principal Act, as so in force, shall be read and construed as a reference to a category 2 restricted publication within the meaning of the Principal Act, as so amended; and
- 25 (c) a child pornography publication within the meaning of the Principal Act, as so in force, shall be read and construed as a reference to a prohibited publication within the meaning of the Principal Act, as so amended.



(m) by way of statute law revision (Schedule 1 (1) and (6)).

The Bill contains other provisions of a minor, consequential or ancillary character.

The Bill also contains certain savings, transitional and other provisions (Schedule 2).



INDECENT ARTICLES AND CLASSIFIED PUBLICATIONS
(AMENDMENT) ACT, 1984, No. 156

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 156, 1984.

An Act to amend the Indecent Articles and Classified Publications Act, 1975, to make further provision with respect to the classification and supply of certain publications. [Assented to, 10th December, 1984.]

Indecent Articles and Classified Publications (Amendment) 1984

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

Short title.

1. This Act may be cited as the "Indecent Articles and Classified Publications (Amendment) Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Indecent Articles and Classified Publications Act, 1975, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 32, 1975.

5. The Principal Act is amended in the manner set forth in Schedule 1.

Savings, transitional and other provisions.

6. Schedule 2 has effect.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT.

- (1) Section 4—

Omit the section.

- (2) (a) Section 5 (1), definitions of “category 1 restricted publication”, “category 2 restricted publication”—

After the definition of “Board”, insert:—

“category 1 restricted publication” means—

- (a) a publication in respect of which a classification under section 13 as a category 1 restricted publication is in force; or
- (b) a copy of such a publication;

“category 2 restricted publication” means—

- (a) a publication in respect of which a classification under section 13 as a category 2 restricted publication is in force; or
- (b) a copy of such a publication;

- (b) Section 5 (1), definition of “child pornography publication”—

Omit the definition.

Indecent Articles and Classified Publications (Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (c) Section 5 (1), definition of “classified publication”—

Omit the definition, insert instead:—

“classified publication” means an unrestricted publication, a category 1 restricted publication, a category 2 restricted publication or a prohibited publication;

- (d) Section 5 (1), definition of “direct sale publication”—

Omit the definition.

- (e) Section 5 (1), definitions of “prohibited publication”, “public place”—

After the definition of “premises”, insert: —

“prohibited publication” means—

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

“public place” means any place open to the public, whether on payment or the provision of any other consideration or otherwise, and includes a shop, stall, vehicle or other place to which persons are invited or permitted to resort to obtain, view or inspect goods or to obtain a service;

- (f) Section 5 (1), definition of “publication”—

After “matter”, insert “and includes photographs, posters, greeting cards and other pictorial matter”.

- (g) Section 5 (1), definition of “restricted publication”—

Omit the definition.

Indecent Articles and Classified Publications (Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (h) Section 5 (1), definitions of “restricted publications area”, “sell”—

Before the definition of “unrestricted publication”, insert:—

“restricted publications area” means any premises constructed, conducted and managed in accordance with the prescribed requirements;

“sell” means sell by wholesale or retail, whether by cash, on terms or otherwise, and includes barter, exchange, supply for profit, let on hire, offer for sale or to let on hire, receive for sale or to let on hire, have in possession for sale or to let on hire, expose for sale or to let on hire, send, forward or deliver for sale or to let on hire and cause, suffer or allow to be sold or to be let on hire, offered or exposed for sale or to be let on hire;

- (i) Section 5 (3)—

Omit the subsection, insert instead:—

(3) A film within the meaning of the Film and Video Tape Classification Act, 1984, that would, but for this subsection, be an indecent article is not an indecent article if it is classified, or exempted from classification, under that Act.

- (3) (a) Section 6 (1) (a), (b)—

Omit the paragraphs, insert instead:—

- (a) where the accused is a corporation—to a penalty not exceeding \$10,000; or
- (b) where the accused is not a corporation—to a penalty not exceeding \$4,000 or imprisonment for 2 years.

Indecent Articles and Classified Publications (Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 6 (4) (a), (b)—

Omit the paragraphs, insert instead:—

- (a) where the accused is a corporation—to a penalty not exceeding \$5,000; or
- (b) where the accused is not a corporation—to a penalty not exceeding \$2,000 or imprisonment for 2 years.

(4) (a) Section 7 (1) (a)—

Omit the paragraph, insert instead:—

- (a) that an article, being—
 - (i) a prohibited publication; or
 - (ii) an article (other than a category 1 restricted publication or a category 2 restricted 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) Section 7 (1)—

Omit “any articles (other than publications) found therein or thereon that may reasonably be suspected of being indecent articles”, insert instead “any such articles found therein or thereon”.

(5) Section 10 (5)—

Omit:—

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.

Indecent Articles and Classified Publications (Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

Insert instead:—

Penalty: \$5,000 in the case of a corporation and \$2,000 or imprisonment for 12 months in any other case.

(6) Sections 11 (a) (i), 15 (14)—

Omit “Public Service Act, 1902” wherever occurring, insert instead “Public Service Act, 1979”.

(7) Sections 12 (6), 13B, 14—

Omit “or 13A” wherever occurring.

(8) Sections 13, 13A—

Omit the sections, insert instead:—

Classification of publications.

13. (1) A classifying authority may, of its own motion, and shall, on an application under section 12, consider the classification to be assigned to a publication.

(2) Except as provided by subsection (3), a classifying authority may—

(a) classify a 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, 18A and 18B, classify a publication as a category 1 restricted publication or a category 2 restricted publication.

Indecent Articles and Classified Publications (Amendment) 1984

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Where the classifying authority is of the opinion that a publication—

- (a) contains indecent matter that depicts, whether by photograph or in any other pictorial manner, a person who is, or who is apparently, under the age of 16 years and who—
 - (i) is engaged in an activity, including the activity of posing, of a sexual nature; or
 - (ii) is in the presence of another person who is so engaged;
- (b) describes, depicts, expresses, or otherwise deals with, sexual activity of any kind between a human being and an animal;
- (c) contains a detailed and gratuitous description or depiction of an act of significant cruelty;
- (d) contains an explicit and gratuitous description or depiction of an act of sexual violence;
- (e) promotes, incites or encourages the use of hard drugs; or
- (f) promotes, incites or encourages terrorism within the meaning of the Australian Security Intelligence Organization Act 1979 of the Commonwealth,

the classifying authority shall classify the publication as a prohibited publication.

(9) Sections 17–20—

Omit the sections, insert instead:—

Conditions relating to category 1 restricted publications.

17. The following conditions apply in relation to a category 1 restricted publication:—

- (a) the publication shall not be sold or delivered to a person who has not attained the age of 18 years (other than by a parent or guardian of the person);

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (b) the publication shall not be exhibited or displayed in a public place unless the publication is contained in a sealed package;
- (c) where the sealed package referred to in paragraph (b) is made of transparent material—the publication shall bear the prescribed markings;
- (d) where the sealed package referred to in paragraph (b) is made of opaque material—both the publication and the package shall bear the prescribed markings.

Conditions relating to category 2 restricted publications.

18. The following conditions apply in relation to a category 2 restricted publication:—

- (a) the publication shall not be sold or delivered to a person who has not attained the age of 18 years (other than by the parent or guardian of the person);
- (b) the publication shall not be exhibited or displayed other than in a restricted publications area;
- (c) the publication shall not be sold or delivered to a person unless the publication bears the prescribed markings;
- (d) the publication shall not be sold or delivered to a person who has not made a direct request for the publication;
- (e) the publication shall not be sold or delivered to a person unless the publication is contained in a package made of plain, opaque material.

Offences: category 1 and 2 restricted publications.

18A. (1) A person shall not publish or cause or permit to be published a category 1 restricted publication otherwise than in accordance with the conditions applicable to that publication.

Penalty: \$5,000 in the case of a corporation and \$1,000 or imprisonment for 12 months in any other case.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(2) A person shall not publish or cause or permit to be published a category 2 restricted publication otherwise than in accordance with the conditions applicable to that publication.

Penalty: \$10,000 in the case of a corporation and \$2,000 or imprisonment for 2 years in any other case.

(3) It is a defence to a prosecution for an offence under subsection (1) or (2) where the offence is alleged to have been committed with respect to a person who had not attained the age of 18 years as at the date of the alleged offence if the defendant proves—

- (a) that the defendant took all such steps as were reasonable in the circumstances to avoid being guilty of the alleged offence; or
- (b) that the defendant or the defendant's servant or agent had reasonable grounds for believing, and did in fact believe, that the person in respect of whom the alleged offence was committed had attained the age of 18 years as at the date of the alleged offence.

Offences: prohibited publications.

18B. A person shall not—

- (a) publish a prohibited publication; or
- (b) have possession of a prohibited publication apparently for the purpose of publishing it.

Penalty: \$15,000 in the case of a corporation and \$4,000 or imprisonment for 2 years in any other case.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.***Advertising relating to certain publications.**

19. (1) Except to the extent provided by this section, section 14 and the regulations, a person shall not publish any advertising material of such a nature that a person may thereby be informed, whether by implication or otherwise—

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

Penalty: \$5,000 in the case of a corporation and \$1,000 or imprisonment for 12 months in any other case.

(2) It is not an offence under subsection (1) for a person to publish in a restricted publications area any advertising material in respect of a category 1 restricted publication or a category 2 restricted publication.

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

Forfeiture of certain publications.

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

- (a) where the contravention involved a category 1 restricted publication—all category 1 restricted publications that were;

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- (b) where the contravention involved a category 2 restricted publication—all category 2 restricted publications that were;
- (c) where the contravention involved a prohibited publication—all prohibited publications that were; or
- (d) where the contravention involved advertising material—all advertising material of the nature referred to in section 19 (1) that was,

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

(10) (a) Section 21 (1)—

Omit “(including a shop)”.

(b) Section 21 (1)—

Omit “restricted publication or a direct sale publication”, insert instead “category 1 restricted publication or a category 2 restricted publication”.

(11) (a) Section 25 (b)—

Omit “restricted publication or a direct sale publication”, insert instead “category 1 restricted publication or a category 2 restricted publication”.

(b) Section 25 (b)—

Omit “section 17, 18 or 19”, insert instead “section 18A or 19”.

(12) Section 26 (a)—

Omit “a restricted publication, a direct sale publication or a child pornography publication”, insert instead “a category 1 restricted publication, a category 2 restricted publication or a prohibited publication”.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(13) Section 29—

Omit “17, 18”, insert instead “18A, 18B”.

(14) (a) Section 30 (2)—

Omit “restricted or direct sale publications” wherever occurring, insert instead “category 1 restricted publications or category 2 restricted publications”.

(b) Section 30 (3)—

Omit “\$500”, insert instead “\$1,000”.

SCHEDULE 2.

(Sec. 6.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

1. In this Schedule, “appointed day” means the day appointed and notified under section 2 (2).

Validation of classification of certain publications.

2. The classification of a publication under section 13 of the Principal Act before the appointed day is not invalid by reason that an application for the classification of the publication was not made under section 12 of the Principal Act.

Classification of publications.

3. (1) A publication the classification of which was in force immediately before the appointed day under section 13 of the Principal Act, as so in force, shall be deemed to be a classified publication under section 13 of the Principal Act, as amended by this Act.

*Indecent Articles and Classified Publications (Amendment) 1984*SCHEDULE 2—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

- (2) A publication referred to in subclause (1) shall be deemed—
- (a) in the case of a restricted publication within the meaning of the Principal Act, as in force immediately before the appointed day—to be a category 1 restricted publication within the meaning of the Principal Act, as amended by this Act;
 - (b) in the case of a direct sale publication within the meaning of the Principal Act, as so in force—to be a category 2 restricted publication within the meaning of the Principal Act, as so amended; and
 - (c) in the case of a child pornography publication within the meaning of the Principal Act, as so in force—to be a prohibited publication within the meaning of the Principal Act, as so amended.

Construction of references to classification to publications.

4. On and from the appointed day, a reference in any other Act, or in any regulation, by-law or other statutory instrument or in any other document, whether of the same or of a different kind, to—

- (a) a restricted publication within the meaning of the Principal Act, as in force immediately before the appointed day, shall be read and construed as a reference to a category 1 restricted publication within the meaning of the Principal Act, as amended by this Act;
- (b) a direct sale publication within the meaning of the Principal Act, as so in force, shall be read and construed as a reference to a category 2 restricted publication within the meaning of the Principal Act, as so amended; and
- (c) a child pornography publication within the meaning of the Principal Act, as so in force, shall be read and construed as a reference to a prohibited publication within the meaning of the Principal Act, as so amended.

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

J. A. ROWLAND,
Governor.

*Government House,
Sydney, 10th December, 1984.*



