



## ANALYSIS

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1972, No. 136

**An Act to amend the Indecent Publications Act 1963**

[20 October 1972]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title**—This Act may be cited as the Indecent Publications Amendment Act 1972, and shall be read together with and deemed part of the Indecent Publications Act 1963 (hereinafter referred to as the principal Act).

**2. Interpretation**—Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

“ ‘Person interested’, in relation to an interim restriction order under section 14A of this Act or to a restriction order under section 15A of this Act, means—

“(a) The applicant for the order:

“(b) The Secretary:

“(c) The publishers of the book or sound recording to which the order relates or their representatives in New Zealand:

“(d) Where the order relates to a book, its author:

“(e) Any person who satisfies the Chairman or the Tribunal, as the case may require, that he is detrimentally affected by the existence of the order:

“‘Restricted publication’ means a book or sound recording classified by the Tribunal under paragraph (b) of section 10 of this Act as indecent in the hands of persons under a specified age or as indecent unless its circulation is restricted to specified persons or classes of persons or unless used for a particular purpose, as the case may be:”.

**3. Interim restrictions**—The principal Act is hereby amended by inserting, after section 14, the following section:

“14A. (1) An *ex parte* application for an interim restriction order in respect of any book or sound recording may be made to the Tribunal—

“(a) By the Comptroller of Customs or the Secretary for Justice, in any case where the book or sound recording has been submitted to the Tribunal in accordance with section 14 of this Act and the Tribunal has not announced its decision on the book or sound recording:

“(b) By the Attorney-General, in any case where leave has been given under section 29 of this Act for the prosecution of any person in respect of the book or sound recording.

“(2) An application under this section may accompany the notice of application lodged with the Tribunal under section 14 (4) of this Act if the person submitting the book or sound recording is either of the officers mentioned in paragraph (a) of subsection (1) of this section.

“(3) The Chairman shall hear and determine on behalf of the Tribunal every application under this section.

“(4) Every interim restriction order shall come into force on the day on which it is made and, unless sooner revoked, discharged, or extended, shall remain in force for such period, not exceeding 1 month, as may be specified therein.

“(5) While any interim restriction order is in force no person who has knowledge of the making of that order shall do any act or thing in relation to the book or sound recording to which the order relates which would be an offence against any of the provisions of paragraphs (a), (d), (e), (f), (g), (i), or (j) of subsection (1) of section 21 of this Act or of paragraphs (b), (c), or (d) of subsection (1) of section 22 of this Act if that book or sound recording were an indecent document or sound recording as the case may require.

“(6) Every interim restriction order shall be published in the *Gazette* and shall be advertised, in such manner as the Chairman shall direct, by the person on whose application the order is made. In addition that person shall as soon as reasonably practicable give express notice of the making of that order to such persons or classes of persons as the Chairman shall direct.

“(7) Every person who is given express notice of the making of an interim restriction order shall, if he has supplied the book or sound recording to which the order relates to any other person, for distribution, sale, or hire, give, where practicable and as soon as reasonably practicable, notice of the making of the order to that other person.

“(8) If the Tribunal announces its decision on any book or sound recording while any interim restriction order is in force that order shall be deemed to be discharged.

“(9) The Chairman or the Tribunal may on the *ex parte* application of any person interested or of his or its own motion make an order extending the term of any interim restriction order (but not so that its total term exceeds 3 months) or revoke it. Every order that extends the term of an interim restriction order or revokes it shall be published in the *Gazette* and shall be advertised in such manner, and notified to such persons, as the Chairman or the Tribunal shall direct.

“(10) In any case in which the Chairman and the Deputy Chairman, if one has been appointed, become incapable, by reason of illness, absence, or other sufficient cause, of exercising any function conferred on the Chairman by this section, that function shall be exercised, on behalf of the Tribunal, by 3 members of the Tribunal. The decision of the majority of those 3 members shall be the decision of the Tribunal.

“(11) Every person who acts in contravention of or fails to comply with subsection (5) or subsection (7) of this section

commits an offence against this section and is liable on summary conviction—

“(a) In the case of an individual, to a fine not exceeding \$500:

“(b) In the case of a body corporate, to a fine not exceeding \$2,000.

“(12) Nothing in section 5 or in sections 15 to 19 of this Act shall apply in respect of proceedings under this section or to decisions made in any such proceedings.”

**4. Publication of reference to proceedings may be prohibited**—Section 15 of the principal Act is hereby amended by omitting from subsection (6) (as amended by section 7 (1) of the Decimal Currency Act 1964) the words “two hundred dollars”, and substituting the expression “\$500”.

**5. Serial publications**—The principal Act is hereby amended by inserting, after section 15, the following section:

“15A. (1) Where it has been determined under this Act that no less than 3 issues of a serial publication which have been published within a period of not more than 12 months are indecent or are restricted publications, the Tribunal may in the course of any proceedings relating to an issue of that publication make an order (in this section called ‘a restriction order’) in respect of that serial publication.

“(2) Every restriction order shall come into force on the day after the date of its notification in the *Gazette* and, unless sooner revoked, shall remain in force for such period, not exceeding 2 years, as may be specified therein and shall apply to every issue of that publication which is published while the order is in force. The order shall show whether the issues of the publication are to be treated as indecent documents or as restricted publications and, in the latter case, particulars of the classification.

“(3) While any restriction order is in force in respect of any serial publication no person shall do any act or thing in relation to any issue to which the order applies (other than an issue whose character has been determined by the Tribunal or the Supreme Court) which would be an offence against section 21 or section 22 of this Act if that issue were an indecent document or a restricted publication, as the restriction order may require.

“(4) The Tribunal may on the application of any person interested revoke or vary the terms of any restriction order.

“(5) Every person who acts in contravention of or fails to comply with subsection (3) of this section commits an offence against this section and is liable on summary conviction to a fine not exceeding \$500.

“(6) In this section—

“‘Serial publication’ means a magazine or periodical published at substantially regular intervals or any publication divided into parts which are published separately at intervals; but does not include a newspaper published at intervals of less than one month:

“‘Issue’ means a separately published part of a serial publication.”

**6. Decisions of Tribunal**—Section 16 of the principal Act is hereby amended by omitting from subsection (1) the words “and in open Court”.

**7. Offences of strict liability**—(1) Section 21 of the principal Act is hereby amended by repealing paragraph (b) of subsection (1), and substituting the following paragraph:

“(b) Prints an indecent document or, for the purposes of sale or distribution to the public, publishes or distributes any indecent document or sound recording; or”.

(2) The said section 21 is hereby further amended by adding to subsection (1) the following paragraphs:

“(i) Exhibits an indecent document in or within view of a public place; or

“(j) Sends to any person in expectation of payment or otherwise for gain or by way of advertisement any indecent document or sound recording not expressly ordered or solicited by that person.”

(3) The said section 21 is hereby further amended—

(a) By adding to paragraph (h) of subsection (1) the word “; or”:

(b) By omitting from subsection (2) (as amended by section 7 (1) of the Decimal Currency Act 1964) the words “two hundred dollars”, and substituting the expression “\$500”.

**8. Offences involving knowledge**—(1) Section 22 of the principal Act is hereby amended by inserting in subsection (1), after paragraph (a), the following paragraph:

“(ab) Does any Act mentioned in paragraph (f), paragraph (g), or paragraph (h) of subsection (1) of section 21 of this Act knowing or having reasonable cause to believe that the book or sound recording is a restricted publication; or”.

(2) Section 22 of the principal Act (as amended by section 7 (1) of the Decimal Currency Act 1964) is further amended—

- (a) By omitting from paragraph (a) of subsection (2) the words “four hundred dollars”, and substituting the expression “\$500”; and
- (b) By omitting from paragraph (b) of subsection (2) the words “one thousand dollars”, and substituting the expression “\$2,000”.

**9. Vicarious liability**—Section 23 of the principal Act is hereby amended—

- (a) By inserting, after the words “offered for sale or hire”, the words “or exhibited or played contrary to the provisions of this Act,”; and
- (b) By omitting the words “delivered, or offered”, and substituting the words “delivered, offered, exhibited, or played”.

**10. Exhibiting parts of a document**—The principal Act is hereby further amended by inserting, after section 22, the following section:

“22A. A person may be convicted of exhibiting an indecent document if what is exhibited is in all the circumstances indecent, notwithstanding that it is a part only of a document that is not indecent or is a restricted publication.”

**11. Disposal following conviction**—The principal Act is hereby amended by inserting, after section 25, the following section:

“25A. (1) Where any person is convicted of an offence against this Act, the convicting Court may, if it is satisfied after reference to the Tribunal if necessary, that any document

or sound recording the subject of the prosecution is indecent, order that the document or sound recording be destroyed at the expiration of 14 days from the making of the order, and the document or sound recording shall in the meantime be impounded.

“(2) It shall not be necessary to issue a summons under subsection (2) of section 25 of this Act in any case where all the documents and sound recordings seized under a search warrant are indecent and are the subject of a prosecution in which the occupier of the place searched is the person or one of the persons convicted.

“(3) The making of an order under subsection (1) of this section shall be postponed if a summons is required to be issued under section 25 of this Act in respect of the document or sound recording and that summons has not been issued and disposed of.

“(4) Before making an order under subsection (1) of this section the Court shall give the person convicted and any other person, who, in the opinion of the Court, would be directly affected by the destruction of the book or sound recording which was the subject of the prosecution an opportunity of being heard.

“(5) If the Court is satisfied that the book or sound recording should be restored to a person other than the person convicted it may so direct.

“(6) Subsections (5) to (7) of section 25 of this Act shall apply for the purposes of this section with such modifications as are necessary.”

**12. Printed matter to be marked with name and address of publisher or wholesale distributor—**(1) Section 27 of the principal Act is hereby amended by omitting from paragraph (b) of subsection (6) the word “advertising”.

(2) This section shall come into force on the 1st day of January 1973.

**13. Extending time for taking prosecutions—**The principal Act is hereby further amended by inserting, after section 28, the following section:

“28A. Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect

of any offence against this Act may be laid at any time within 2 years after the time when the matter of the information arose.”

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This Act is administered in the Department of Justice.

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