

INDECENT PUBLICATIONS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Indecent Publications Act 1910 so as to extend the definition of the term "indecent document" and to provide for the registration of distributors of printed matter.

Clause 2 re-enacts the provision setting out the matters, to be taken into consideration in determining whether any document is indecent within the meaning of the principal Act. Paragraph (*d*) of the new section is new. It enables a document to be held to be indecent if it tends to deprave persons of any class or age group, notwithstanding that persons of other classes or age groups may not be similarly affected.

Clause 3 provides that, subject to the considerations set out in *clause 2*, a document shall be deemed to be indecent if it unduly emphasizes matters of sex, horror, crime, cruelty, or violence. This is in addition to the present section 6 of the principal Act.

Registration of Distributors of Printed Matter

Clause 4 defines the term "distributor" to mean the publisher in respect of matter published in New Zealand, and the New Zealand distributor of matter published out of New Zealand. Printed matter is defined so as to exclude newspapers, matter of a purely official, religious, social, professional, or business character, and matter exempted by the Minister of Justice by notice in the *Gazette*.

Clause 5 requires the Secretary for Justice to keep a register of all distributors of printed matter.

Clause 6 requires all existing distributors to apply for registration within three months after the date of the commencement of the Act, and other distributors to apply for registration before commencing business. Registration is to be automatic on payment of the prescribed fee.

Clause 7 requires the register or a supplementary list to be published in the *Gazette* annually.

Clause 8 makes a copy of the register or a certificate of the Secretary for Justice *prima facie* evidence of the registration or non-registration of any distributor.

Clause 9 prohibits the sale or distribution of printed matter by distributors who are not registered.

Clause 10 requires distributors to have their names and addresses marked on all printed matter sold or distributed by them. It also prohibits booksellers and newsagents from selling printed matter unless it is so marked with the name and address of the distributor. The Minister is authorized to grant exemptions from these provisions.

Clause 11 empowers a Court to order the cancellation or suspension of the registration of any distributor upon his being convicted of the crime of publishing obscene matter, or of any offence against the Indecent Publications Act or the new Act. Application may be made to a Magistrate's Court for removal of the cancellation or suspension. At the end of a period of suspension, the distributor concerned is automatically re-registered.

Clause 12 provides that the name and address of a distributor marked on any printed matter is to be *prima facie* evidence that he is the distributor of it.

Clause 13 provides that no distributor, bookseller, or newsagent is to be liable for breach of contract for rejecting or refusing delivery of any printed matter if he reasonably believes that it would render him liable to an offence under the law relating to indecent documents and he gives notice to the supplier of the reason for rejecting or refusing delivery.

Clause 14 enables regulations to be made for the purposes of the Act.

Clause 15 provides penalties for a first offence of a fine not exceeding £50 or imprisonment for a term not exceeding one year, and for subsequent offences of a fine not exceeding £100 or imprisonment for a term not exceeding two years. Directors or officers of a company are to be liable to the same penalties if they direct, authorize, or permit offences by the company.

Hon. Mr Bowden

INDECENT PUBLICATIONS AMENDMENT

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A BILL INTITULED

AN ACT to amend the Indecent Publications Act 1910. Title.
BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority
5 of the same, as follows:

1. This Act may be cited as the Indecent Publications Amendment Act 1954, and shall be read together with
and deemed part of the Indecent Publications Act 1910
(hereinafter referred to as the principal Act). Short Title.
See Reprint
of Statutes,
Vol. II, p. 346

Considerations determining whether or not document is indecent.

2. The principal Act is hereby amended by repealing section five, and substituting the following section:

“5. (1) In determining whether any document or other matter is indecent within the meaning of this Act the Magistrate shall take into consideration—

“(a) The nature of the document or matter:

“(b) The nature and circumstances of the act done by the defendant with respect thereto, and the purpose for which the act was done:

“(c) The literary or artistic merit or medical, legal, political, or scientific character or importance of the document or matter:

“(d) The persons, classes of persons, or age groups to or amongst whom the document or matter was or was intended or was likely to be published, distributed, sold, exhibited, given, sent, or delivered; and the tendency of the matter or thing to deprave or corrupt any such persons, class of persons, or age group (notwithstanding that persons in other classes or age groups may not be similarly affected thereby).

“(2) No document or matter shall be held to be indecent unless, having regard to the aforesaid and all other relevant considerations, the Magistrate is of opinion that the act of the defendant was of an immoral or mischievous tendency.”

Documents unduly emphasizing sex, horror, crime, cruelty, or violence deemed indecent.

3. Section six of the principal Act is hereby amended by inserting, after the words “preventing conception”, the words “or which unduly emphasizes matters of sex, horror, crime, cruelty, or violence”.

Registration of Distributors of Printed Matter

Interpretation.

4. (1) For the purposes of the principal Act and this Act, unless the context otherwise requires,—

“Distributor”—

(a) In relation to any printed matter published in New Zealand, means the publisher thereof; and

(b) In relation to any printed matter published outside New Zealand, means the person primarily responsible for its distribution or sale in New Zealand:

5 “Minister” means the Minister of Justice:

“Printed matter” means any book, paper, pamphlet, magazine, periodical, letterpress, print, picture, photograph, lithograph, or other reproduction; but does not include—

10 (a) Any newspaper within the meaning of the Printers and Newspapers Registration Act 1908;

See Reprint of Statutes, Vol. VI, p. 954

15 (b) Any printed matter of a purely official, religious, social, professional, scholastic, commercial, business, advertising, or trading character; or

(c) Any printed matter or class of printed matter for the time being exempted by the Minister as hereinafter provided:

20 “Secretary” means the Secretary for Justice.

(2) The Minister may from time to time, by notice published in the *Gazette*, exempt any printed matter or class of printed matter from the registration provisions of this Act, and may from time to time in like manner
25 amend or revoke any such notice.

5. The Secretary shall cause to be kept a register in the prescribed form of all distributors of printed matter in New Zealand, and shall cause all the prescribed particulars with respect to registered distributors of
30 printed matter to be entered therein.

Register of distributors of printed matter.

6. (1) Every distributor of printed matter who is acting as such at the date of the commencement of this Act shall within three months after that date apply in the prescribed manner and form to be registered in the
35 register, and upon payment of the prescribed fee he shall be entitled to be so registered.

Applications for registration.

(2) Every person who after the date of the commencement of this Act desires to commence business as a distributor of printed matter in New Zealand shall
40 before commencing that business apply in the prescribed

manner and form to be registered in the register, and upon payment of the prescribed fee he shall, subject to this Act, be entitled to be so registered.

Publication of register.

7. (1) The Secretary shall as soon as possible after the expiration of the period of three months from the date of the commencement of this Act cause a copy of the register, corrected to the last day of the calendar month then last past, to be published in the *Gazette*. 5

(2) In every subsequent year the Secretary shall cause to be published in the *Gazette*— 10

(a) A copy of the register corrected to the end of the corresponding calendar month; or

(b) A supplementary list showing all alterations, additions, revisions, and removals made in the register during the year ending on the last day of the corresponding calendar month— 15

as the Secretary determines.

(3) Every supplementary list published as aforesaid shall be deemed to be part of the last published copy of the register, and that published copy shall be read as subject to every such supplementary list so published. 20

Evidence of registration.

8. (1) Any copy of the register published as aforesaid shall be *prima facie* evidence of the facts therein stated, and the absence of the name of any person from the published copy shall be *prima facie* evidence that that person is not or was not registered under this Act, as the case may be. 25

(2) A certificate signed by the Secretary—

(a) To the effect that any person is or is not or was or was not on any specified date registered under this Act; or 30

(b) Setting out particulars contained in the register in connection with any registration—

shall be *prima facie* evidence of the facts therein stated. 35

Distributors to be registered.

9. After the date of the first publication of the register no distributor of printed matter shall sell or distribute for sale any printed matter unless he is registered under this Act.

10. (1) After the date of the first publication of the register no distributor of printed matter shall sell or distribute for sale any printed matter unless each separate article so sold or distributed is marked in the prescribed manner with the name and address of the distributor thereof.

Printed matter to be marked with name and address of distributor.

(2) After the expiration of three months from the date of the first publication of the register no bookseller, newsagent, or other person shall sell or exhibit for sale or have in his possession for sale any printed matter unless each separate article thereof is marked in the prescribed manner with the name and address of the distributor thereof.

(3) The Minister may from time to time by notice published in the *Gazette* grant exemptions from compliance with the foregoing provisions of this section in respect of any printed matter or class of printed matter specified or described in the notice, and may from time to time in like manner amend or revoke any such notice.

(4) Where any exemption with respect to any printed matter or class of printed matter is revoked, the provisions of subsection *two* of this section shall not apply with respect to that printed matter or class of printed matter until the expiration of three months from the date of the publication of notice of the revocation.

11. (1) Where any distributor of printed matter is convicted—

Cancellation or suspension of registration.

(a) Of an offence against section one hundred and fifty-seven of the Crimes Act 1908; or

See Reprint of Statutes, Vol. II, p. 228

(b) Of an offence against the principal Act or this Act—

the Court before which he is so convicted, whether or not any other penalty is imposed, may in its discretion by order direct that his registration as a distributor of printed matter be cancelled or that his registration be suspended for such period as the Court directs.

(2) For the purposes of appeal, every order directing cancellation or suspension of a registration as aforesaid shall be deemed to be the sentence or, as the case may be, part of the sentence of the Court.

(3) After cancellation or during the period of suspension of any registration the distributor in question shall be deemed to be unregistered and shall be ineligible to be re-registered unless, upon application made in the prescribed manner to a Magistrate's Court after the prescribed notice in writing of intention so to apply has been served upon the Secretary, the Court directs that the distributor be re-registered. 5

(4) Upon the expiration of the period for which any registration is suspended as aforesaid the distributor in question, if he has not already been re-registered, shall again be deemed to be registered without further application. 10

Proof of
distribution
by distributor.

12. The fact that any printed matter is marked in the prescribed manner with the name and address of any person as distributor shall in any proceedings for an offence against the principal Act or this Act be accepted as sufficient evidence that that printed matter was in fact distributed by that person and that he is the distributor thereof, unless the contrary is shown. 15 20

Relief from
contracts.

13. Notwithstanding anything in any contract or agreement, whether entered into before or after the commencement of this Act, a distributor, bookseller, newsagent, or other person shall not be liable for breach of contract by reason only of his rejecting any printed matter delivered to him or of his refusing to accept delivery of or deal in any printed matter in any case where— 25

See Reprint
of Statutes,
Vol. II, p. 228

(a) He reasonably and in good faith believes that his acceptance of delivery of or his possession of or dealing in that printed matter may render him liable for an offence against section one hundred and fifty-seven of the Crimes Act 1908 or against the principal Act or this Act; and 30 35

(b) He gives to the person from whom he has received or is to receive delivery of the printed matter notice in writing of his rejection or refusal thereof and of the reason therefor as soon as practicable after he becomes aware of the nature of the printed matter in question. 40

14. (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for the purpose of giving full effect to this Act and providing
5 for the due administration thereof. Regulations.

(2) All regulations made under this section shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session, and, if not, shall be laid before Parliament within twenty-
10 eight days after the date of the commencement of the next ensuing session.

15. (1) Every person who acts in contravention of or fails to comply in any respect with any provision of this Act commits an offence against the principal Act,
15 and shall be liable for a first offence to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding one year, and for a second or any subsequent offence to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding two years. Offences.

20 (2) Where any such offence is committed by a body corporate, every director or officer of the body corporate who knowingly directs, authorizes, or permits the commission of the offence shall be deemed to have also committed the offence.