
RESTRICTED PUBLICATIONS ACT 1974

ANALYSIS

PART I—PRELIMINARY

1. Short title and commencement.
2. Repeals and consequential amendments.
3. Interpretation.

PART II—ADMINISTRATION

4. Restricted Publications Board.
5. Criteria to be applied by Board.
6. Powers of the Board.

PART III—RESTRICTED
PUBLICATIONS

7. Board to classify publication as restricted publication.
8. Restrictions that may be imposed by the Board.
9. Board to notify applicant of determination.

10. Notice in respect of determination, &c.

11. Records and evidence of classifications, &c.

12. Handling, &c., of restricted publications by young persons.

13. Prohibition of advertisement of restricted publications.

14. Liability of principals.

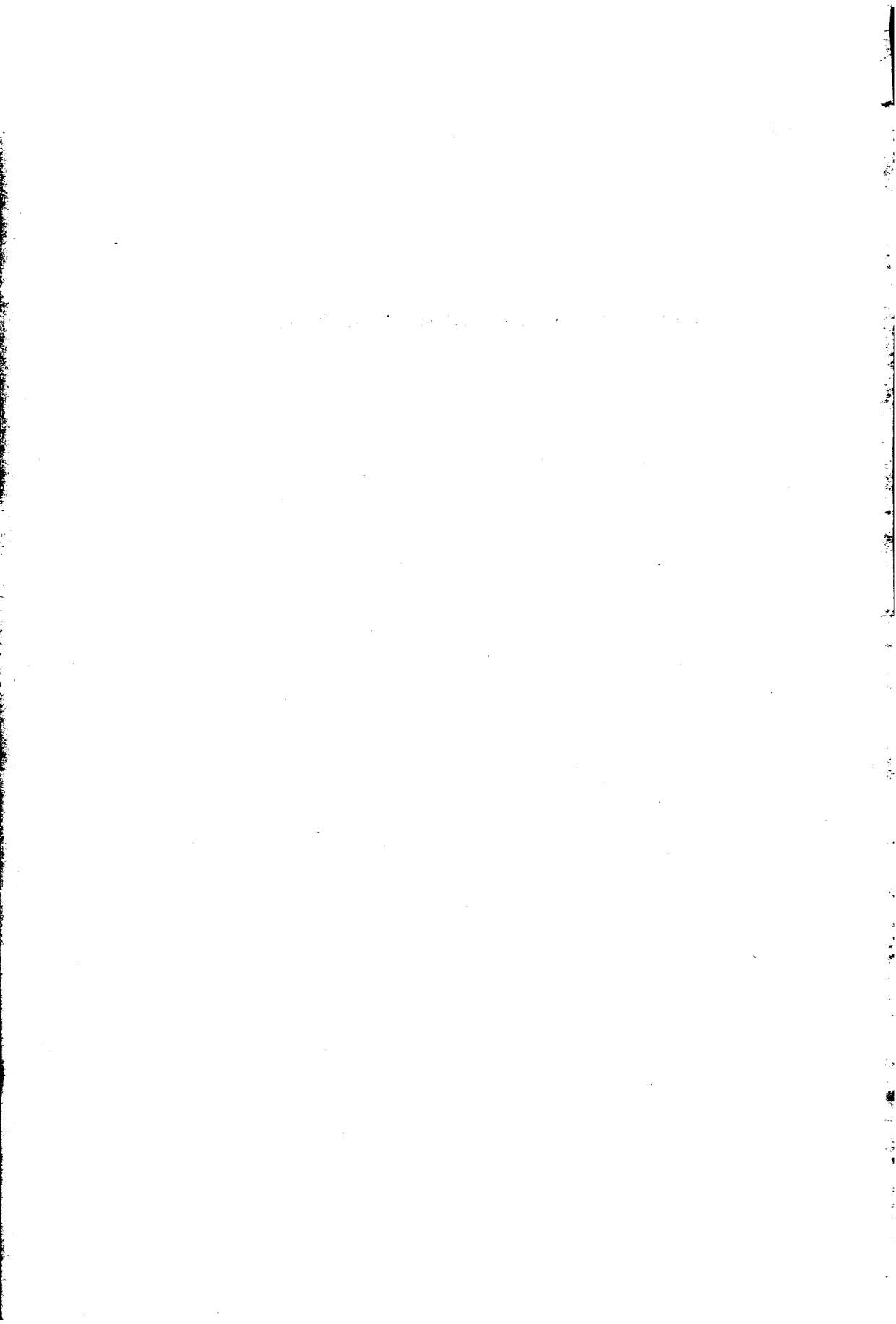
15. Proof of age.

16. Power to enter and seize

17. Offences.

18. Regulations.

19. Expiry of Act.





RESTRICTED PUBLICATIONS

No. 103 of 1974

AN ACT to repeal the enactments prohibiting the production and distribution of indecent or obscene material; to prohibit the public display and the sale to young persons of certain publications; and to make provision for certain related matters.

[19 December 1974]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I

PRELIMINARY

1—(1) This Act may be cited as the *Restricted Publications Act 1974*. Short title and commencement.

(2) Sections 2, 10, 11, 12, 13, 14 and 15 commence on a date to be fixed by proclamation.

2—(1) The *Objectionable Publications Act 1954* is repealed. Repeals and consequential amendments.

(2) The *Police Offences Act 1935* is amended—

(a) by omitting Division IV of Part II;

(b) by omitting paragraph (a) of subsection (1) of section 59;

(c) by omitting from that subsection the words “a police

magistrate or any two justices in a case under paragraph (a) hereof, or any justice in a case under paragraph (b),” and substituting therefor the words “ any justice ”; and

(d) by omitting Form I in the second Schedule thereto.

(3) The *Criminal Code* is amended—

(a) by omitting paragraph (a) of subsection (1) of section 138; and

(b) by omitting from that subsection the words “ Publishing [or exhibiting] ” and substituting therefor the word “ Exhibiting ”.

Interpretation.

3—(1) In this Act, unless the contrary intention appears—

“ Board ” means the Restricted Publications Board established under section 4;

“ periodical ” means a publication the separate issues of which are published at regular, or substantially regular, intervals;

“ publication ” means any book, paper, magazine, film, slide, or written or pictorial matter that is available, or intended to be made available for exhibition, display, sale, or distribution to members of the public, but does not include a film to which a classification has been assigned in accordance with the provisions of the *Films Act* 1971;

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

“ restricted publication ” means a publication that is classified as a restricted publication under section 7;

“ young person ” means a person who has not attained the age of eighteen years but does not include a married person.

(2) A reference in this Act to the selling of a publication to a person shall be construed as including a reference to the delivery to that person of that publication for, or in the expectation of receiving, any payment or other consideration.

(3) In respect of a business that is carried on on any premises each of the following persons is, for the purposes of this Act, a responsible person, namely:—

(a) The person carrying on that business; and

(b) Any person apparently having the management or charge of the business or the management or charge of the business so far as it is carried on on those premises.

PART II

ADMINISTRATION

4—(1) There shall be established a board to be known as the Restricted Publications Board.

Restricted
Publication
Board.

(2) The Board shall consist of five members appointed by the Governor, one of whom shall be appointed as chairman of the Board, and one of whom shall be appointed as deputy chairman.

(3) The members of the Board are not, as such, subject to the *Public Service Act* 1973, and nothing in that Act shall be construed as preventing a person holding office as a member of the Board in conjunction with any other office.

(4) The chairman of the Board, or, if he is absent, the deputy chairman, shall preside at a meeting of the Board.

(5) Three members of the Board constitute a quorum at any meeting of the Board.

(6) The chairman or other person presiding at a meeting of the Board has a deliberative vote only and, in the event of an equality of votes on any matter before a meeting of the Board, that matter stands adjourned to the next meeting of the Board.

(7) Subject to this Act, the Board may regulate its own proceedings.

(8) The members of the Board may be paid such remuneration as the Governor may determine, but no determination shall be made under this section with respect to a member of the Board who holds or is acting in an office subject to Part IV of the *Public Service Act* 1973 except on the recommendation of the Chairman of the Public Service Board.

(9) A member of the Board, unless he sooner resigns or otherwise ceases to hold office, continues in office for a period of 3 years, except that when a member of the Board dies or ceases to hold office otherwise than by reason of the effluxion of time, the member appointed to fill the vacancy ceases to hold office at the expiration of the unexpired term of office of the member in whose place he is appointed.

(10) The Minister may appoint a person to be the Registrar of the Board and may make arrangements to render available to the Board such staff and accommodation as the Board may require.

(11) With the approval of the Chairman of the Public Service Board, a person holding or acting in an office subject to Part IV of the *Public Service Act* 1973 may, in conjunction with that office, hold office as Registrar of the Board or serve the Board in any other capacity.

Criteria to be applied by Board.

5 In performing its functions under this Act, the Board shall—

(a) give effect to the principles—

(i) that generally adult persons are entitled to read and view what they wish; and

(ii) that members of the community are entitled to protection (extending both to themselves and those in their care) from exposure to unsolicited material that they find offensive,

and, in a case where the application of those principles would lead to conflicting conclusions, shall exercise its powers in a manner that will in the opinion of the Board achieve a reasonable balance in the application of those principles; and

(b) have due regard to—

(i) the decisions, determinations, or directions of authorities of the Commonwealth and of the States of the Commonwealth relevant to the performance of those functions; and

(ii) the nature of the publication under consideration and to all other relevant factors that bear upon the classification of the publication and the conditions that should be imposed in respect of that publication.

Powers of the Board.

6 Where the Board considers it necessary or desirable to inquire into any matter in relation to the exercise of its functions under this Act, Division II of Part II of the *Evidence Act* 1910 applies to that inquiry as if—

(a) the Board were such a board of inquiry as is referred to in section 14 (1) (b) of that Act; and

(b) the matter were the matter into which it was appointed to inquire by its instrument of appointment.

PART III

RESTRICTED PUBLICATIONS

Board to classify publication as restricted publication.

7—(1) Subject to subsection (2) the Board may, of its own motion, and shall, on the application in the prescribed manner of any person, determine whether or not a publication should be classified as a restricted publication.

(2) Where the Minister refers any publication to the Board for its determination whether or not the publication should be classified as a restricted publication, the Board shall make the determination.

(3) Where the Board determines that a publication should be classified as a restricted publication it shall so classify the publication.

(4) The Board shall classify a publication to be a restricted publication if the publication describes, depicts, expresses or otherwise deals with matters of sex, drug addiction, crime, cruelty, violence, or revolting or abhorrent phenomena in a manner that is likely to cause offence to reasonable adult persons or is unsuitable for perusal by young persons.

(5) Where the Board classifies an issue of a periodical as a restricted publication it may also classify that periodical as a restricted publication, and thereupon all issues of that periodical shall, subject to any subsequent determination of the Board, be deemed to be restricted publications.

(6) Where the Board classifies a publication as a restricted publication all copies of that publication are deemed to be so classified.

(7) Where changes have been or are to be made in the nature, contents, or characteristics of an issue of a periodical which is classified as a restricted publication, and the Board is satisfied that by reason of those changes the periodical should no longer be classified as a restricted publication, the Board shall revoke the classification so far as it relates to issues of that periodical published after such date as the Board may specify.

8 The Board may, at the time when it classifies a publication as a restricted publication or at any time thereafter, impose all or any of the following conditions in respect of that publication:—

Restrictions
that may be
imposed by
the Board.

- (a) A condition prohibiting the sale, delivery, exhibition, or display of the publication;
- (b) A condition prohibiting the sale, delivery, exhibition or display of the publication to a young person or the exhibition or display of the publication in circumstances in which it is likely to be perused by young persons;
- (c) A condition prohibiting or restricting the exhibition or display of the publication in a place to which the public has access or in such a manner that it is visible from any such place;
- (d) A condition prohibiting the sale or delivery of the publication except to adults making a direct request for the publication; and

- (e) A condition prohibiting or restricting the publication of advertisements in respect of the publication.

Board to notify applicant of determination.

9 Where the Board makes a determination on the application of any person it shall notify that person of its determination.

Notice in respect of a determination, &c.

10—(1) Notice of—

- (a) any determination of the Board in respect of the classification or non-classification of a publication as a restricted publication;
- (b) the imposition by the Board of a condition in respect of a publication; or
- (c) the revocation of the classification of a publication as a restricted publication,

shall be published in the *Gazette* and in a newspaper circulating generally throughout the State.

(2) Where the Board—

- (a) classifies a publication as a restricted publication;
- (b) revokes the classification of a publication as a restricted publication; or
- (c) imposes a condition in respect of a publication,

the classification of the publication or the revocation thereof or the imposition of the condition shall take effect from and including the day on which a notice is first published in pursuance of this section.

Records and evidence of classifications, &c

11—(1) The Board shall maintain in a convenient form records of all determinations made by it whether or not by such determinations it classifies publications as restricted publications and the records so maintained are in this section referred to as “the official record”.

(2) On making application to the Registrar of the Board and on payment of such fee (if any) as may be prescribed any person is entitled to inspect the official record.

(3) On application being made in writing to the Registrar of the Board with respect to a specified publication and on payment of such fee (if any) as may be prescribed with respect to the application he shall furnish the applicant with a certificate giving particulars, as they are set forth in the official record, of the determinations of the Board relating to that publication.

(4) A document purporting to be a certificate under the hand of the Registrar of the Board giving such particulars as are mentioned

in subsection (3) is sufficient evidence that those particulars are correct and that no other determinations have been made by the Board before the date of the certificate affecting that publication.

12—(1) No person shall sell a restricted publication to a young person. Handling, &c., of restricted publications by young persons.

(2) No person shall sell a restricted publication to another person, knowing or having reason to believe that that other person intends to deliver, exhibit, or display the publication to a young person.

(3) No person (except the parent or guardian of the young person) shall allow a young person to inspect or peruse a restricted publication.

(4) A responsible person in respect of a business carried on on any premises shall not—

- (a) permit a young person employed in that business to have access to any restricted publication; or
- (b) cause or permit such a young person to sell any restricted publication.

13—(1) Except in accordance with section 10 no person shall display, publish, or issue an advertisement, or cause an advertisement to be displayed, published, or issued, that states or indicates— Prohibition of advertisement of restricted publications

- (a) that any publication is a restricted publication; or
- (b) that publications that are restricted publications are available at any place or from any person.

(2) For the purposes of this section “ advertisement ” includes—

- (a) every visual form of advertising (including any accompanying spoken words or other sounds) whether in a publication, or by the exhibition of cinematograph films or photographs, or by way of television or in any other way; and
- (b) any form of advertising intended to be heard from a broadcast receiver or any instrument or device for the production of sound.

(3) Any person who contravenes this section is guilty of an offence and liable to a penalty of \$1 000 or imprisonment for three months.

Liability of principals.

14—(1) Where an offence under this Part is committed by a person on any premises on which a business is carried on, each responsible person in respect of that business is also guilty of that offence unless it is shown—

- (a) that the offence was committed without his knowledge or connivance; and
- (b) that he took all such steps as were reasonable in the circumstances to prevent the offence from being committed.

(2) Where an offence under this Part committed by a body corporate is committed with the consent or connivance of, or is attributable to any neglect on the part of—

- (a) any director, manager, secretary, or other similar officer of the body corporate; or
- (b) any person who purports to act in any such capacity, that person is also guilty of that offence.

Proof of age.

15—(1) In any proceedings for an offence against this Act an averment in a complaint as to the age of any person shall be deemed to be proved in the absence of proof to the contrary.

(2) In any proceedings for an offence against this Act alleged to have been committed with respect to a young person it shall be a defence to show that at the time the offence was committed the defendant had reasonable grounds for believing that that person had attained the age of eighteen years.

Power to enter and seize.

16—(1) On complaint on oath of a police officer that he has reasonable grounds for believing that—

- (a) an offence under this Act in relation to any publication has been or is being committed on any premises; or
- (b) any advertisement is being displayed in or on those premises contrary to the provisions of this Act,

a justice may issue a warrant authorising any police officer to enter those premises and seize—

- (c) any publication in respect of which he has reasonable grounds for believing that an offence under this Act has been or is being committed; or
- (d) any advertisement displayed contrary to the provisions thereof.

(2) Where any publication or advertisement has been seized from any premises under this section and a court has convicted a person of an offence against this Act in respect of that publication or advertisement the court may order that the publication or advertisement be forfeited to the Crown, and the publication or advertisement so forfeited shall be disposed of or destroyed in such manner as the Attorney-General may direct.

(3) Subject to subsection (2), where any publication or advertisement has been seized from any premises under this section and has not been returned within one month from the date of the seizure to the premises from which it was seized a court of petty sessions, on being satisfied on an application in the prescribed manner that the applicant is the owner of that publication or advertisement, may direct that the publication or advertisement be returned to him; but no order shall be made under this section if, following seizure, proceedings have been taken for an offence against this Act alleged to have been committed on those premises and those proceedings have not been terminated.

17—(1) A person who sells, distributes, delivers, exhibits or otherwise deals with a restricted publication in contravention of any condition imposed under section 8 shall be guilty of an offence and liable to a penalty of \$1 000 or imprisonment for three months. ^{Offences.}

(2) A person who publishes, or is concerned in the publication of, an advertisement contrary to any condition imposed under section 8 shall be guilty of an offence and liable to a penalty of \$1 000 or imprisonment for three months.

(3) No person shall sell or distribute any copies of a restricted publication that are not marked, in accordance with the regulations, in a manner that indicates the conditions to which sale and distribution of the publication are subject.

Penalty: \$500.

(4) Except in such cases or circumstances as may be prescribed, no person shall sell or distribute any copies of a restricted publication that are not wrapped in accordance with the regulations.

Penalty: \$500.

Regulations.

18 The Governor may make regulations for the purposes of this Act.

Expiry of Act.

19 This Act shall expire on the thirty-first day of December 1977.