

# AUSTRALIAN CAPITAL TERRITORY.

No. 5 of 1958.

## AN ORDINANCE

### Relating to Objectionable Publications.

I THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1955*.

Dated this ninth day of April, 1958.

W. J. SLIM

Governor-General.

By His Excellency's Command,

ALLEN FAIRHALL

Minister of State for the Interior.

#### OBJECTIONABLE PUBLICATIONS ORDINANCE 1958.\*

1. This Ordinance may be cited as the *Objectionable Publications Ordinance 1958*. Short title.

2. Upon the commencement of this Ordinance, the Obscene and Indecent Publications Act, 1901, of the State of New South Wales shall cease to apply to the Territory as a law of the Territory. New South Wales Act to cease to apply.

3. This Ordinance shall be administered by the Minister of State for the Interior. Administration.

4. In this Ordinance, unless the contrary intention appears— Definitions.

“Magistrate” has the same meaning as in the *Court of Petty Sessions Ordinance 1930-1953*;

“objectionable” means obscene or unduly emphasizing horror, gross cruelty or crimes of violence;

“obscene” includes unduly emphasizing matters of sex;

“publication” includes a book, paper, or other written or printed matter, and a picture, photograph, film, lithograph, statue, figure, carving or sculpture;

\* Notified in the *Commonwealth Gazette* on 17th April, 1958.

“public place” means a place, whether a building or not to which free access is permitted to the public, and includes a road, street or footpath, whether on private property or not, which the public is allowed to use;

“publish” includes offer for sale, sell, let on hire, exhibit, display and distribute;

“the Court” means the Court of Petty Sessions established under the *Court of Petty Sessions Ordinance* 1930-1953.

Court to have regard to certain matters.

5. For the purposes of this Ordinance, the Court, in determining whether a publication is objectionable, shall have regard to—

- (a) the general character of the publication;
- (b) the persons or classes of persons to or amongst whom it was published or was intended or likely to be published; and
- (c) the tendency of the publication to deprave or corrupt those persons or persons included in any of those classes of persons,

to the intent that the publication may be held to be objectionable when it tends or is likely to deprave or corrupt any of those persons or persons included in any of those classes of persons, notwithstanding that other persons may not be similarly affected.

Offences.

6.—(1.) A person shall not—

- (a) sell, or otherwise publish for gain, an objectionable publication;
- (b) have an objectionable publication in his possession for the purpose of selling it or of otherwise publishing it for gain;
- (c) being the occupier of premises, keep, or suffer or permit to be kept, at those premises, for the purpose of its being sold or otherwise published for gain, an objectionable publication;
- (d) publish an objectionable publication in a public place or in such a manner that the publication is visible to persons in or passing along a public place;
- (e) deposit or throw an objectionable publication in or upon a public place or, except with the permission of the occupier, in or upon private premises; or
- (f) print or otherwise make or produce an objectionable publication for the purpose of selling the publication or otherwise publishing it for gain.

(2.) Subject to the next succeeding sub-section, a person who contravenes any of the provisions of the last preceding sub-section is guilty of an offence punishable on conviction by a penalty not exceeding—

- (a) where the offence is committed by a corporation—a fine of Five hundred pounds; or
- (b) in any other case—a fine of One hundred pounds or imprisonment for six months.

(3.) A person shall not be convicted of an offence against this section in respect of an objectionable publication unless the Court is satisfied that he knew or suspected, or ought to have known or suspected, that the publication was objectionable.

7.—(1.) Where it appears to a Magistrate, by reason of matters contained in an information on oath laid before him, that a provision of sub-section (1.) of the last preceding section has been or is being contravened in any premises, he may issue a warrant authorizing any member of the Police Force, within seven days after the issue of the warrant, to enter those premises in the day-time and search for and seize all publications which appear to the member to be objectionable and forthwith bring the publications seized before a Magistrate. Search and seizure.

(2.) A member of the Police Force acting under this section may use such force and assistance as are necessary.

(3.) Where a publication is brought before a Magistrate under this section, it shall be placed in such custody as the Magistrate directs.

8.—(1.) Where a person is convicted of an offence against this Ordinance in relation to an objectionable publication, or would have been so convicted but for the provisions of sub-section (3.) of section six of this Ordinance, the Court may order the objectionable publication to be forfeited to the Commonwealth. Forfeiture or return of publications.

(2.) Where a person is charged with an offence against section six of this Ordinance but the Court is not satisfied that he has contravened sub-section (1.) of that section, the Court shall order that any publication to which the prosecution relates that has been seized as an objectionable publication be delivered to the person appearing to the Court to have been entitled to possession of the publication immediately before its seizure.

(3.) Where a publication has been lawfully seized by a member of the Police Force as an objectionable publication but no person has been charged with an offence under this Ordinance in respect of that publication, a Magistrate shall, on the application of a member of the Police Force made within fourteen days after the seizure of the publication, issue a summons

requiring the occupier of the premises from which the publication was seized, or the person from whom it was seized, or both, as the Magistrate determines, to appear before the Court and show cause why the publication seized should not be forfeited to the Commonwealth.

(4.) Where the Magistrate issues a summons under the last preceding sub-section, he shall, so far as he considers it reasonably practicable so to do, cause notice of the proceedings to be given to every person whose name appears on the publication as the author, publisher, printer, manufacturer or owner of the publication.

(5.) In proceedings under this section, the Court may permit a person who claims to be the author, publisher, printer, manufacturer or owner of the publication (whether or not a notice has been given to him under the last preceding sub-section) and who appears or is represented at the proceedings to intervene in the proceedings for the purpose of maintaining that the publication is not objectionable.

(6.) Upon the hearing of a summons issued under sub-section (3.) of this section, the Court shall—

- (a) if it is satisfied that there was a contravention of sub-section (1.) of section six of this Ordinance in respect of the publication and that it is desirable that the publication should be forfeited to the Commonwealth—order the publication to be forfeited to the Commonwealth; or
- (b) if it is not so satisfied—order that the publication be delivered to the person appearing to the Court to have been entitled to possession of the publication immediately before its seizure.

(7.) Where a publication has been lawfully seized by a member of the Police Force as an objectionable publication and, at the expiration of fourteen days after the seizure—

- (a) no person has been charged with an offence against this Ordinance in respect of the publication; and
- (b) a summons has not been issued under sub-section (3.) of this section in respect of the publication, the publication shall be returned to the person from whom it was seized or to the occupier of the premises from which it was seized.

(8.) Subject to the next succeeding sub-section, a publication which, by or under this section, is ordered to be forfeited to the Commonwealth may be destroyed or dealt with as directed by the Minister.

(9.) Where the Court has ordered a publication to be forfeited to the Commonwealth, the Minister shall not direct the destruction of the publication before the expiration of the time allowed for instituting an appeal against the order or, if an appeal is lodged within that time, before the determination of the appeal.

9.—(1.) For the purposes of this Ordinance, the Court shall not find a publication to be objectionable if it is a publication of literary or artistic merit or of a *bona fide* medical, legal, political, religious or scientific character unless the Court is satisfied that the conduct of the person alleged to have contravened a provision of sub-section (1.) of section six of this Ordinance in relation to the publication was not justified in the circumstances of the particular case having regard, in particular, to the persons or classes of persons into whose hands the publication was intended or was likely to come.

Exemption of literary, etc., works.

(2.) In proceedings under this Ordinance in relation to a publication alleged to be objectionable, evidence (including expert opinion) is admissible as to the literary or artistic merit, or the medical, legal, political, religious or scientific character, of the publication.

10. An offence against this Ordinance shall not be prosecuted except with the written consent of the Attorney-General or of a person authorized by the Attorney-General to give such consents.

Authority to prosecute.