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EXPLANATORY MEMORANDUM

AUSTRALIAN CAPITAL TERRITORY

OBJECTIONABLE PUBLICATIONS ORDINANCE 1957.

At the moment the law in the Territory relating to objectionable publications is the Obscene and Indecent Publications Act 1901 of New South Wales. Recently that Act has been amended but amendments since 1911 to New South Wales Acts have no application to the Territory. Legislation relating to objectionable publications has been amended in most of the other States in recent years, broadly along lines similar to New South Wales provisions. This Ordinance follows generally the line of the relevant legislation in the States.

The Ordinance makes it an offence to sell, publish or print objectionable publications, "objectionable" in this sense meaning obscene or unduly emphasising matters of sex, horror, gross cruelty or crimes of violence, "publications" including statues and carvings as well as written and printed matter.

In determining whether or not the publication is objectionable the Court shall have regard to certain considerations and in particular the tendency of the publication to adversely affect the minds of the people or classes of people who would normally be expected to read them.

Publications of literary or artistic merit or of a bona fide medical, legal, political, religious or scientific character are exempt from the provisions of the Ordinance in certain circumstances.

# AUSTRALIAN CAPITAL TERRITORY.

No. of 1957.

## 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

day of \_\_\_\_\_, 1957.

Governor-General.

By His Excellency's Command,

Minister of State for the Interior.

#### OBJECTIONABLE PUBLICATIONS ORDINANCE 1957.\*

1. This Ordinance may be cited as the *Objectionable Publications Ordinance 1957*. 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 \_\_\_\_\_, 1957.

“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*.

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

Court to have regard to certain matters.

- (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.

6.—(1.) A person shall not—

Offences.

- (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.) 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.

7.—(1.) Where a Magistrate has reason to believe, by reason of matters contained in an information on oath laid before him, that an offence against this Ordinance has been or is being committed in any premises, he may issue a warrant authorizing a member of the Police Force named in the warrant, 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. Seizure and search.

(2.) A member of the Police Force may, in a public place, without warrant, seize a publication which appears to him to be objectionable and to be published in the public place, or to be carried about or kept in the public place for the purpose of its being published in a public place, and forthwith bring the publication seized before a Magistrate.

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

(4.) 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, the Court may declare the publication to be forfeited to the Commonwealth. Forfeiture or return of seized publications.

(2.) A person having an interest in a publication seized under the last preceding section (not being a publication which, under the last preceding sub-section, has been declared to be forfeited to the Commonwealth) may, within thirty days after the seizure of the publication and after giving to the Clerk of the Court and to the Commissioner of Police not less than seven days' notice in writing of his intention so to do, apply to the Court for an order that the publication be delivered to the person entitled to possession of the publication immediately before its seizure.

(3.) The Crown is entitled to be heard in proceedings under the last preceding sub-section.

(4.) Where an application is made under sub-section (2.) of this section, the Court shall—

- (a) if it is satisfied that the publication is objectionable—declare that the publication is 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.

(5.) If, with respect to a seized publication, an application under sub-section (2.) of this section is not duly made to the Court, the publication shall be deemed to be forfeited to the Commonwealth.

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

(7.) Where the Court has declared that a publication is 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.

(8.) In proceedings under this section before the Court, the Court shall, if it considers it reasonably practicable to do so, give to every person whose name appears on the publication as the author, publisher, printer or manufacturer of the publication an opportunity of intervening in the proceedings as a party.

9.—(1.) For the purposes of this Ordinance, a publication shall not be deemed 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 committed, or to have intended to commit, an offence against 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.