

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]
House of Representatives, 22 August 1963

Words struck out by the Statutes Revision Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line of struck out matter; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line of new matter.

Hon. Mr Hanan

INDECENT PUBLICATIONS

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A BILL INTITULED

An Act to consolidate and amend certain enactments of the General Assembly relating to indecent publications

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

1. **Short Title and commencement**—(1) This Act may be cited as the Indecent Publications Act 1963.

(2) This Act shall come into force on the first day of January, nineteen hundred and sixty-four.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Book” means any book, magazine, or periodical (other than a newspaper published at intervals of less than a month); and includes any picture-story book, whether likely to be read by children or not: 5

“Document” means any book, newspaper, periodical, picture, photograph, photographic negative, photographic plate, photographic slide or film, and any print or writing, and any paper or other thing which has printed or impressed upon it or otherwise shown thereon any word, statement, sign, picture, or representation; but does not include— 10 15

(a) Any cinematograph film in respect of which a certificate of approval is in force under the Cinematograph Films Act 1961; or

(b) Any cinematograph film which is for the time being exempt from examination for censorship under or pursuant to the provisions of the Cinematograph Films Act 1961; or 20

(c) Any poster which is approved by the Censor of Cinematograph Films and which is used or intended to be used in relation to any cinematograph film: 25

“Indecent” includes describing, depicting, expressing, or otherwise dealing with matters of sex, horror, crime, cruelty, or violence in a manner that is injurious to the public good:

“Minister” means the Minister of Justice: 30

“Newspaper” means any newspaper within the meaning of the Newspapers and Printers Act 1955, or any periodical publication which is published (whether in New Zealand or elsewhere) at intervals not exceeding three months, or any copy of or part of any copy of any newspaper as so defined; and every document which at any time accompanies and is distributed along with any newspaper shall be deemed to form part of the newspaper: 35

“Public place” has the same meaning as in section 40 of the Police Offences Act 1927: 40

“Secretary” means the Secretary for Justice:

“Tribunal” means the Indecent Publications Tribunal constituted under this Act.

Cf. 1910, No. 19, s. 2; 1954, No. 78, s. 4; 1961, No. 109, s. 2 (1) 45

3. Indecent Publications Tribunal—(1) There is hereby constituted a Tribunal to be known as the Indecent Publications Tribunal.

(2) The Tribunal shall consist of—

5 (a) A barrister or solicitor of the Supreme Court of not less than seven years' practice, whether or not he holds or has held any judicial office, who shall be the Chairman of the Tribunal:

10 (b) Four other members of whom at least two shall have special qualifications in the field of literature or education.

(3) The members of the Tribunal shall be appointed by the Governor-General on the recommendation of the Minister.

15 (4) Except as provided in subsection (5) of this section, every member of the Tribunal shall hold office for a period of five years, but may from time to time be reappointed.

20 (5) Any member of the Tribunal may be at any time removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General, or may at any time resign his office by writing addressed to the Minister:

25 Provided that if at any time the Chairman of the Tribunal holds any other judicial office he shall not be removed from office as Chairman, except for disability, unless he is removed or suspended from his other judicial office.

30 (6) If any member of the Tribunal dies, is removed from office, or resigns, the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made. Every person so appointed shall be appointed for the residue of the term for which his predecessor was appointed.

(7) Unless he sooner vacates his office as provided in subsection (5) of this section, every member of the Tribunal shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

(8) The powers of the Tribunal shall not be affected by any vacancy in its membership.

40 **4. Deputy members**—(1) In any case in which the Chairman or any other member of the Tribunal becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if the Chairman or any other member deems it not proper or desirable that he should adjudicate on any specified

matter, the Governor-General may appoint a suitable person to be the deputy of the Chairman or of that member, as the case may require, to act for the Chairman or member for the period or purpose stated in the appointment.

(2) No person shall be appointed as deputy Chairman unless he is eligible for appointment as Chairman. 5

(3) Every deputy appointed under this section shall, while acting for a member, be deemed to be a member of the Tribunal, and, in the case of a deputy for the Chairman, shall, while so acting, be deemed to be the Chairman of the Tribunal. 10

(4) The fact that any person is sitting as the deputy of the Chairman or any other member of the Tribunal shall be conclusive evidence of his authority to do so, and no person shall be concerned to inquire whether the occasion for his appointment has arisen or ceased. 15

5. Sittings of the Tribunal—(1) The Chairman shall preside at all sittings of the Tribunal.

(2) The Chairman and two other members of the Tribunal shall constitute a quorum at any sitting of the Tribunal, but the Chairman shall, as far as practicable, ensure that all five members are present at any sitting at which, in his opinion, difficult or important matters are to be considered. 20

(3) Every question before the Tribunal shall be determined by the opinion of the majority of the members present at a sitting of the Tribunal, and where the members are equally divided in their opinions that of the Chairman shall prevail. 25

(4) Except as expressly provided in this Act or in regulations made under this Act, the Tribunal may regulate its procedure in such manner as it thinks fit. 30

6. Evidence in proceedings before Tribunal or Court—

(1) The Tribunal and any Court may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with *(the matter before it)* any matter before it relating to the character of a document or sound recording, whether or not the same would be otherwise admissible in a Court of law. 35

(2) Subject to the provisions of subsection (1) of this section, the Evidence Act 1908 shall apply to the Tribunal in the same manner as if the Tribunal were a Court within the meaning of that Act. 40

7. **Tribunal to be a Commission of Inquiry**—(1) The Tribunal shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Act, all the provisions of that Act shall apply accordingly.

(2) The Chairman of the Tribunal, or any other member purporting to act by direction or with the authority of the Chairman, may issue summonses requiring the attendance of witnesses before the Tribunal, or the production of documents, or may do any other act preliminary or incidental to the hearing of any matter by the Tribunal.

8. **Seal of the Tribunal**—The Tribunal shall have a seal, which shall be judicially noticed by all Courts and for all purposes.

9. **Remuneration and travelling expenses**—(1) There shall be paid out of money appropriated by Parliament to the members and deputy members of the Tribunal remuneration by way of salaries or fees and allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

(2) The Tribunal is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

10. **Functions of Tribunal**—The functions of the Tribunal shall be—

- (a) To determine the character of any book or sound recording submitted to it for classification:
- (b) To classify books and sound recordings submitted to it as indecent or not indecent or as indecent in the hands of persons under a specified age or as indecent unless their circulation is restricted to specified persons or classes of persons or unless used for a particular purpose, as the case may be:
- (c) To hear and determine any question relating to the *(nature)* character of a book or sound recording referred to it by a Court in any civil or criminal proceedings (including proceedings under section 23 of this Act), and to forward a report of its findings to that Court.

11. Matters to be taken into consideration by Tribunal or Court—(1) In classifying or determining the character of any book or sound recording the Tribunal shall take into consideration—

- (a) The dominant effect of the book or sound recording as a whole: 5
- (b) The literary or artistic merit, or the medical, legal, political, social, or scientific character or importance of the book or sound recording:
- (c) The persons, classes of persons, or age groups to or amongst whom the book or sound recording is or is intended or is likely to be published, heard, distributed, sold, exhibited, played, given, sent, or delivered: 10
- (d) The price at which the book or sound recording sells or is intended to be sold: 15
- (e) Whether any person is likely to be corrupted by reading the book or hearing the sound recording and whether other persons are likely to benefit therefrom:

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- (f) In the case of a book, whether the author was pursuing an honest purpose and an honest thread of thought or whether the content of the book is merely camouflage designed to render acceptable any indecent parts of the book. 20

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- (f) Whether the book or the sound recording displays an honest purpose and an honest thread of thought or whether its content is merely camouflage designed to render acceptable any indecent parts of the book or sound recording. 25
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(2) Notwithstanding the provisions of subsection (1) of this section, where the publication of any book or the distribution of any sound recording would be in the interests of art, literature, science, or learning and would be for the public good, the Tribunal shall not classify it as indecent. 35

(3) When the Tribunal decides that any picture-story book likely to be read by children is indecent in the hands of children under a specified age that picture-story book shall be deemed to be indecent in the hands of all persons.

(4) Where any Court is required to classify or determine the character of any document (other than a book) it shall take into consideration, with such modifications as are necessary, the matters set out in subsections (1) and (2) of this section. 40

12. Tribunal to determine indecency—(1) Except as provided in subsections (2) and (3) of this section and **(section 18)** sections 18 to 19 of this Act, where in any civil or criminal proceedings before a Court (including proceedings under section 23 of this Act) a question arises as to whether any book or sound recording is indecent within the meaning of this Act or is indecent in the hands of persons under a specified age or is 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, the Court shall refer the question to the Tribunal for decision and report, and the Tribunal shall have exclusive jurisdiction to determine the question.

(2) Where in any civil or criminal proceedings the defendant admits that a book or sound recording is indecent or is indecent in the hands of persons under a specified age or that it is 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, the Court may accept that admission and dispense with a reference to the Tribunal.

(3) Where any book or sound recording has been referred to the Tribunal and the Tribunal or the **(Court of Appeal)** Supreme Court has classified it or determined its character **(or nature)**, the production in any proceedings of a notice of the decision published in the *Gazette* together with a certificate under the seal of the Tribunal to the effect that that decision is still in force shall be sufficient proof in any Court of the decision. If that decision is conclusive proof of the character **(or nature)** of that book or sound recording under subsection (1) of section 18 of this Act, the Court shall dispense with a reference to the Tribunal in those proceedings.

13. Tribunal may refer questions of jurisdiction to Supreme Court—Where the Tribunal is in doubt whether it has jurisdiction to hear and determine any question under this Act it may refer that matter to the Supreme Court for decision.

14. Submission of books and sound recordings to Tribunal—(1) The Comptroller of Customs or the Secretary may submit any book or sound recording to the Tribunal for a decision as to whether it is indecent or not or for a decision as to its classification.

(2) Any other person may submit any book or sound recording to the Tribunal for such a decision with the leave of the Minister or, if such leave is refused, with the leave of the Chairman of the Tribunal.

(3) Application for the leave of the Minister or for the leave of the Chairman of the Tribunal under subsection (2) of this section shall be made in the prescribed manner.

(4) Where a person submits a book or sound recording to the Tribunal under this section he shall lodge a notice of application in the prescribed form with the Tribunal and (except where the Secretary is the person making the submission) with the Secretary, and shall give public notice of the application within such time and in such manner as the Chairman directs in the *Gazette* and in such other newspapers and trade journals (if any) as the Chairman shall specify.

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(5) After public notice of the application has been given in accordance with subsection (4) of this section the Chairman shall fix a date and place for the hearing and shall cause the applicant, the Secretary, and representatives of the publishers and distributors of the book or sound recording and such other persons as have satisfied the Tribunal that they are likely to be affected, to be notified and given an opportunity to appear and call evidence and make representations, and the applicant, the Secretary, and such of those representatives and other persons as appear and take part in the hearing shall be the parties to the proceedings.

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(5) After public notice of the application has been given in accordance with subsection (4) of this section the Chairman shall fix a date and place for the hearing and shall cause the applicant, the Secretary, the publishers of the book or sound recording or their representatives in New Zealand, and such other persons as have satisfied the Tribunal that they are likely to be affected to be given notice of that date and place.

(6) The persons who are notified under subsection (5) of this section and such other persons as satisfy the Tribunal that they are likely to be affected and, where the hearing is to determine the character of a book, the author of that book may appear as parties to the proceedings and may call evidence before and make representations to the Tribunal.

15. Publication of reference to proceedings may be prohibited—(1) Subject to the provisions of subsections (2) to (4) of this section, all proceedings before the Tribunal and proceedings on appeal from the Tribunal shall be open to the public.

(2) Where the Tribunal or the (*Court of Appeal*) Supreme Court is of the opinion that the interests of public morality require that all or any persons should be excluded from the hearing of any such proceedings, the Tribunal or the Court, 5 as the case may require, may direct that those persons be excluded accordingly:

Provided that the power conferred by this subsection shall not be exercised for the purpose of excluding any party to the proceedings, or any barrister or solicitor, or any (*accredited* 10 *newspaper reporter*) bona fide reporter for a newspaper or a news service.

(3) In any case in which the (*Court of Appeal*) Supreme Court may give any direction under subsection (2) of this section, and whether or not it gives such a direction, the Court 15 may make an order forbidding the publication and broadcasting, whether by radio or television, of any report or account of the whole or any part of the evidence adduced; and the breach of any order made under this subsection, or any evasion or attempted evasion of it, may be dealt with as 20 contempt of Court.

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(4) The Tribunal may order that no reference to any proceedings before it, or to the decision upon any such proceedings, shall be published in any newspaper other than 25 the *Gazette*, or may limit publication to a statement prepared by the Tribunal, or may make any other order limiting publication or decline to make an order as the Tribunal thinks fit:

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(4) The Tribunal may order that no reference to any proceedings before it, or to the decision upon any such proceedings, shall be published in any newspaper other than the 30 *Gazette* or be made in any radio or television broadcast, or may limit publication and broadcasting, whether by radio 35 or television, to a statement prepared by the Tribunal, or may make any other order limiting publication or such broadcasting or decline to make an order as the Tribunal thinks fit:

Provided that where in the opinion of the Tribunal a difficult or important question has been considered an order 40 prohibiting publication or broadcasting of the decision shall not be made:

Provided also that no order made under this **(section)** subsection shall apply to the publication of any report in any newspaper or periodical publication of a technical character bona fide intended for circulation among librarians, book-sellers, or publishers or among members of the legal or medical professions. 5

(5) Every person commits an offence and is liable on summary conviction to a fine not exceeding one hundred pounds who acts in contravention of any order made by the Tribunal under subsection (4) of this section. 10

16. Decisions of Tribunal—(1) After hearing the persons who have appeared and considering the evidence and submissions the Tribunal shall announce its decision and give reasons for it in writing and in open Court and may make such order as to costs as it thinks fit. 15

(2) Every order as to costs made under subsection (1) of this section may be filed in the Magistrate's Court nearest to the place where the decision is announced, and may thereafter be enforced as if it were a judgment of that Court.

17. Decisions and classifications to be published in Gazette—Every decision and classification made by the Tribunal, or by the **(Court of Appeal)** Supreme Court on an appeal from the Tribunal, shall be published in the *Gazette*. 20

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18. Decisions to be conclusive evidence—(1) Subject to section 19 of this Act and to subsection (2) of this section, a subsisting decision of the Tribunal or of the Court of Appeal upon any book or sound recording shall be conclusive evidence in any proceedings, other than an appeal under subsection (3) of this section, that the book or sound recording is indecent or not indecent or is indecent in the hands of persons under a specified age or is indecent unless its circulation is restricted to specified persons or classes of persons or unless it is used for a particular purpose, as the case may be. 25 30 35

(2) Where any person is charged with an offence against this Act or any other Act nothing in subsection (1) of this section shall prevent him from challenging any decision upon any book or sound recording made in any proceedings to which he was not a party and in such event the Court may refer the decision to the Tribunal for reconsideration, or to the 40

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Court of Appeal where the decision to be reconsidered is a decision of the Court of Appeal.

(3) Any party to any proceedings before the Tribunal may appeal to the Court of Appeal against any decision of the Tribunal in the proceedings to which he was a party by giving notice, within twenty-eight days after the Tribunal has announced its decision, or within such further period as the Court of Appeal may allow, to the Registrar of the Court of Appeal and to the Secretary and to the other parties to the proceedings. The Court of Appeal may hear and determine the appeal as if that decision had been a decision of the Supreme Court in a civil matter, and the rules applying to such appeals, with such modifications as are appropriate and necessary, shall apply to all proceedings under this subsection.

(4) On any appeal under subsection (3) of this section the Court of Appeal may revoke or vary any decision, classification, or determination of the Tribunal which it considers to be manifestly wrong in whole or in part, and may itself make any decision, classification, or determination which could have been made by the Tribunal in the first instance. For the purposes of any such appeal, the Court may receive in evidence any statement, document, information, or matter which the Tribunal could receive in evidence under subsection (1) of section 6 of this Act.

(5) The decision of the Court of Appeal on any such matter shall be final and conclusive.

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18. Decisions to be conclusive evidence—(1) Subject to section 19 of this Act and to subsection (2) of this section, a subsisting decision of the Tribunal or of the Supreme Court on an appeal from the Tribunal upon any book or sound recording shall be conclusive evidence in any proceedings, other than an appeal under section 18A of this Act, that the book or sound recording is indecent or not indecent or is indecent in the hands of persons under a specified age or is indecent unless its circulation is restricted to specified persons or classes of persons or unless it is used for a particular purpose, as the case may be.

(2) Where any person is charged with an offence against this Act or any other Act nothing in subsection (1) of this section shall prevent him from challenging any decision upon any book or sound recording made in any proceedings to

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which he was not a party and in such event the Court shall refer the decision to the Tribunal for reconsideration, or to the Supreme Court where the decision to be reconsidered is a decision of the Supreme Court.

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(3) The reconsideration of a decision of the Supreme Court pursuant to subsection (2) of this section shall take place before at least three Judges of that Court.

(4) The decision of the Court shall be in accordance with the opinion of the majority of the Judges present.

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(5) If the Judges present are equally divided in opinion the decision under review shall be deemed to be affirmed.

(6) On any such reconsideration the decision of the Supreme Court shall be final and conclusive.

18A. Appeals—(1) Any party to any proceedings before the Tribunal may appeal to the Supreme Court against any decision of the Tribunal in the proceedings to which he was a party by giving notice, within twenty-eight days after the Tribunal has announced its decision, or within such further period as the Supreme Court may allow, to the Registrar of that Court at Wellington and to the Secretary and to the other parties to the proceedings.

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(2) The Supreme Court shall hear and determine the appeal as if the decision of the Tribunal had been made in the exercise of a discretion.

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(3) On any appeal under subsection (1) of this section the Supreme Court may revoke or vary any decision, classification, or determination of the Tribunal and may itself make any decision, classification, or determination which could have been made by the Tribunal in the first instance.

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(4) Every appeal under this section shall be heard by at least three Judges of the Supreme Court.

(5) Subsections (4) and (5) of section 18 of this Act shall apply for the purposes of every appeal under this section.

(6) The decision of the Supreme Court on any appeal under this section shall be final and conclusive.

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(7) Except as expressly provided in this Act or in regulations made under this Act, the Supreme Court may regulate its procedure on any appeal or other matter dealt with by it under this Act in such manner as it thinks fit.

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19. Reconsideration of books and sound recordings—

(1) Any person, with the leave of the Minister or, if such leave is refused, with the leave of the Chairman of the Tribunal, may submit any book or sound recording to the Tribunal for
 5 reconsideration of any decision, classification, or determination made in respect of it if not less than three years have elapsed since that book or recording was last considered by the Tribunal or the (*Court of Appeal*,) Supreme Court, and the Tribunal may alter or confirm the previous decision,
 10 classification, or determination.

(2) Where the decision to be reconsidered is that of the (*Court of Appeal*) Supreme Court the Tribunal shall refer the submission to that Court with or without a written report as the Chairman thinks fit and the provisions of subsections

15 (3) to (6) of section 18 of this Act shall apply for the purposes of the reconsideration of any decision under this subsection.

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20. Offences—(1) Every person commits an offence against
 20 this Act who—

- (a) Sells, or delivers by way of hire, or offers for sale or hire, or has in his possession for sale or hire, an indecent document or sound recording; or
- (b) Prints an indecent document; or
- 25 (c) Makes an indecent sound recording; or
- (d) Causes to be inserted in a newspaper any article, paragraph, advertisement, picture, heading, or other matter or thing, which is indecent; or
- 30 (e) Exhibits an indecent document to any person in consideration or expectation of any payment, or otherwise for gain; or
- (f) Exhibits an indecent document in or within view of a public place; or
- 35 (g) Plays an indecent sound recording in any public place or so that the same can be heard by persons in a public place; or
- (h) Delivers or offers an indecent document or sound recording to any person in a public place; or
- 40 (i) Delivers or leaves on premises in the occupation of any other person an indecent document or sound recording, knowing or having reasonable cause to believe that such document or sound recording is indecent; or

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- (j) Sells, delivers, gives, exhibits, or offers to any person under the age of eighteen years any document or sound recording which is indecent in the hands of a person of the age of the person to whom it is sold, delivered, given, exhibited, or offered; or 5
- (k) Sells, delivers, gives, exhibits, or offers, any document or sound recording which is indecent unless in the hands of particular persons or classes of persons or unless put to a particular use to any person who is not such a person or who is not a member of such a class of persons or to any person for a use other than that specified; or 10
- (l) Delivers to any person any document or sound recording with intent that it should be dealt with by that or any other person in such manner as to constitute an offence against this section. 15
- (2) Every person who commits an offence against subsection (1) of this section is liable on summary conviction to a fine not exceeding one hundred pounds. Except in the case of paragraph (i) of that subsection, it shall be no defence to a charge under this subsection that the defendant had no knowledge or no reasonable cause to believe that the document, sound recording, matter, or thing to which the charge relates was of an indecent nature. 20
- (3) Every person commits an offence who does any act mentioned in subsection (1) of this section knowing or having reasonable cause to believe that the document, sound recording, matter, or thing is indecent. 25
- (4) Every person who commits an offence against subsection (3) of this section is liable on summary conviction— 30
- (a) In the case of an individual, to a fine not exceeding two hundred pounds or to imprisonment for a term not exceeding three months;
- (b) In the case of a body corporate, to a fine not exceeding five hundred pounds. 35
- (5) Every person charged with an offence against subsection (3) of this section may be convicted of an offence against subsection (1) of this section.
- (6) It is a defence to a charge under subsection (1) or subsection (3) of this section to prove that the act of the defendant had no immoral or mischievous tendency. 40

Cf. 1910, No. 19, ss. 3, 5 (2), 8; 1958, No. 16, s. 2 (1)–(3); 1961, No. 109, s. 2 (2)–(3)

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20. **Offences of strict liability**—(1) Every person commits an offence against this Act who—

- 5 (a) Sells, or delivers by way of hire, or offers for sale or hire, or has in his possession for sale or hire, an indecent document or sound recording; or
- (b) Prints an indecent document; or
- (c) Makes an indecent sound recording; or
- 10 (d) Causes to be inserted in a newspaper any article, paragraph, advertisement, picture, heading, or other matter or thing, which is indecent; or
- (e) Exhibits an indecent document to any person in consideration or expectation of any payment, or otherwise for gain; or
- 15 (f) Sells, delivers, gives, exhibits, or offers to any person under the age of eighteen years any document or sound recording which is indecent in the hands of a person of the age of the person to whom it is sold, delivered, given, exhibited, or offered; or
- 20 (g) Sells, delivers, gives, exhibits, or offers, any document or sound recording which is indecent unless in the hands of particular persons or classes of persons or unless put to a particular use to any person who is not such a person or who is not a member of such a class of persons or to any person for a use other than that specified; or
- 25 (h) Delivers to any person any document or sound recording with intent that it should be dealt with by that or any other person in such manner as to constitute an offence against this section or section 20A of this Act.
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(2) Every person who commits an offence against subsection (1) of this section is liable on summary conviction to a fine not exceeding one hundred pounds. It shall be no defence to a charge under that subsection that the defendant had no knowledge or no reasonable cause to believe that the document, sound recording, matter, or thing to which the charge relates was of an indecent nature.

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(3) It is a defence to a charge under subsection (1) of this section to prove that the act of the defendant had no immoral or mischievous tendency.

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- 20A. Offences involving knowledge**—(1) Every person commits an offence against this Act who—
- (a) Does any act mentioned in subsection (1) of section 20 of this Act knowing or having reasonable cause to believe that the document, sound recording, matter, or thing is indecent; or
 - (b) Exhibits an indecent document in or within view of a public place knowing or having reasonable cause to believe that the document is indecent; or
 - (c) Plays an indecent sound recording in any public place or so that the same can be heard by persons in a public place knowing or having reasonable cause to believe that the sound recording is indecent; or
 - (d) Delivers or offers an indecent document or sound recording to any person in a public place knowing or having reasonable cause to believe that the document or sound recording is indecent; or
 - (e) Delivers or leaves on premises in the occupation of any other person an indecent document or sound recording, knowing or having reasonable cause to believe that the document or sound recording is indecent.
- (2) Every person who commits an offence against subsection (1) of this section is liable on summary conviction—
- (a) In the case of an individual, to a fine not exceeding two hundred pounds or to imprisonment for a term not exceeding three months;
 - (b) In the case of a body corporate, to a fine not exceeding five hundred pounds.
- (3) Every person charged with an offence against paragraph (a) of subsection (1) of this section may be convicted of an offence against subsection (1) of section 20 of this Act as if he had been charged under that subsection.
- (4) It is a defence to a charge under subsection (1) of this section to prove that the act of the defendant had no immoral or mischievous tendency.

21. Vicarious liability—When an indecent document or sound recording is sold, or delivered by way of hire, or offered for sale or hire, by a servant or agent in the course of his employment or agency, whether with or without the authority of his employer or principal, the document or sound recording shall, for the purposes of this Act, be conclusively

deemed to have been so sold, delivered, or offered, as the case may be, both by the servant or agent and by his employer or principal, and each of those persons shall be severally guilty of an offence against this Act accordingly.

5 Cf. 1910, No. 19, s. 7

22. Evidence of printing, publishing, manufacture, distribution, or sale of document or sound recording—When, in the case of any prosecution for an offence against this Act, the document or sound recording which is the subject of the
10 prosecution contains or bears a statement that it was printed, published, manufactured, distributed, or sold by any person, that statement may be received as sufficient evidence of the fact so stated unless the contrary is proved.

Cf. 1910, No. 19, s. 9; 1961, No. 109, s. 2 (c)

23. Search warrants—(1) Any Magistrate or Justice, or any Registrar (not being a constable), who, on an application in writing made on oath, is satisfied that there is reasonable ground for believing that any indecent document or sound
15 recording is kept in any building, aircraft, ship, carriage, vehicle, box, receptacle, premises, or place for the purpose of being so dealt with as to constitute an offence against (subsection (1) or subsection (3) of section 20) section 20 or
20 section 20A of this Act, may issue a search warrant in the prescribed form, and the provisions of subsections (2) to (7) of section 198 of the Summary Proceedings Act 1957 shall
25 apply as if the application were made and the warrant issued under that section.

(2) Where any document or sound recording is seized under a search warrant a summons shall be issued calling upon the
30 occupier of the place searched to appear before a Magistrate's Court presided over by a Magistrate to show cause why it should not be destroyed.

(3) If, on the hearing of the summons, the Court is satisfied, after reference to the Tribunal if necessary, that any
35 of the documents or sound recordings so seized are indecent, and have been kept for the purpose of being so dealt with as to constitute an offence against (subsection (1) or subsection (3) of section 20) section 20 or section 20A of this Act,
40 he may order that those documents and sound recordings (except such of them as he considers necessary to be preserved as evidence in any further proceedings) be destroyed at the

expiration of fourteen days from the making of the order, and the documents and sound recordings shall in the meantime be impounded.

(4) If the Magistrate is satisfied, after reference to the Tribunal if necessary, that any documents or sound recordings so seized are not indecent, or have not been kept for the purpose mentioned in subsection (1) and subsection (3) of this section, he shall forthwith direct them to be restored to the occupier of the place in which they were seized. 5

(5) Any person aggrieved by an order made under this section for the destruction of any documents or sound recordings may (whatever the amount involved) appeal therefrom in manner provided by the Summary Proceedings Act 1957, and until such appeal is determined or abandoned the order shall be suspended and shall not be carried into effect: 10 15

Provided that there shall be no appeal to the Supreme Court (*under this subsection*), other than under section 18A of this Act, against any decision of the Tribunal in respect of any book or sound recording.

(6) No action shall lie against any person for any act done in good faith in pursuance or intended pursuance of this section or of any warrant or order issued or made in pursuance or intended pursuance thereof. 20

(7) Subject to the provisions of this section, all proceedings under this section shall be in accordance with the Summary Proceedings Act 1957, and that Act shall apply thereto accordingly. 25

Cf. 1910, No. 19, s. 10

24. Relief from contracts—Notwithstanding anything in any contract, 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 document or sound recording delivered to him or of his refusing to accept delivery of or deal in any document or sound recording in any case where— 30 35

(a) He reasonably and in good faith believes that his acceptance of delivery of or his possession of or dealing in that document or sound recording may render him guilty of an offence against this Act; and

- 5 (b) He gives to the person from whom he has received or is to receive delivery of the document or sound recording 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 document or sound recording in question.

Cf. 1954, No. 78, s. 13; 1961, No. 109, s. 2 (4)

25. Printed matter to be marked with name and address of publisher or wholesale distributor—(1) Except as provided in
10 subsection (4) of this section, no person shall publish any printed matter in New Zealand, unless each separate article is printed or stamped with his name and address.

15 (2) Except as provided in subsection (3) or subsection (4) of this section, no wholesale distributor shall sell or distribute any printed matter published elsewhere than in New Zealand, unless each separate article so sold or distributed is printed or stamped with his name and address.

(3) Nothing in subsection (2) of this section shall apply with respect to—

20 (a) Any book bearing the name of the publisher, if the name and address of the publisher have been notified by the wholesale distributor to the Secretary as those of a publisher of books imported by him:

25 (b) Any magazine or periodical the title of which has been notified by the wholesale distributor to the Secretary as the title of a magazine or periodical imported by him.

30 (4) The Minister may from time to time, by notice in the *Gazette*, grant exemptions from compliance with the provisions of subsection (1) or subsection (2) 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.

35 (5) Every person who acts in contravention of or fails to comply with any provision of this section commits an offence and is liable on summary conviction to a fine not exceeding fifty pounds.

40 (6) For the purposes of this section—
“Printed matter” means any book, paper, pamphlet, periodical, letterpress, print, picture, photograph, lithograph, or other reproduction; but does not include—

(a) Any newspaper registered under the Newspapers and Printers Act 1955; or

(b) Any printed matter of a purely official, religious, social, professional, scholastic, commercial, business, advertising, or trading character: 5

“Wholesale distributor” means any person who imports for sale in New Zealand otherwise than to the public any printed matter published outside New Zealand.

Cf. 1954, No. 78, ss. 2 (1), 10; 1958, No. 16, s. 5

26. Directors and officers of bodies corporate—Where any body corporate is convicted of an offence against this Act, every director and every officer concerned in the management of the body corporate shall be guilty of the offence where it is proved that the act which constituted the offence took place with his knowledge, authority, permission, or consent. 15

Cf. 1954, No. 78, s. 15 (2)

27. Leave of the Attorney-General to prosecute—(1) No prosecution for an offence against this Act shall be commenced except with the leave of the Attorney-General.

(2) The Attorney-General may delegate his powers under subsection (1) of this section to the Commissioner of Police in respect of offences concerning any particular class of documents or sound recordings. 20

(3) The Commissioner of Police, in purporting to act under any delegation under subsection (2) of this section shall, in the absence of proof to the contrary, be presumed to be acting within the terms of the delegation. 25

(4) Any such delegation may be at any time revoked by the Attorney-General, in whole or in part, but that revocation shall not affect in any way anything done under the delegated authority. 30

(5) No such delegation shall prevent the exercise by the Attorney-General himself of the powers conferred on him by subsection (1) of this section.

Cf. 1910, No. 19, s. 12

35

28. Delegation of powers by Commissioner of Police—(1) The Commissioner of Police may from time to time, by writing under his hand, either generally or particularly, delegate to such member or members of the Police, of a rank not less than Inspector, as he thinks fit all or any of the powers delegated to him under section 27 of this Act. 40

(2) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

5 (3) Subject to subsection (1) of this section, any delegation under this section may be made to a specified member of the Police or to members of the Police of a specified rank or class, or may be made to the holder or holders for the time being of a specified office or class of offices.

10 (4) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Commissioner of Police.

(5) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the
15 Commissioner of Police by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Commissioner.

(6) The revocation of any such delegation shall not affect in any way anything done under the delegated authority.

20 **29. Power to exempt**—(1) Where the Minister is satisfied that any document or sound recording which has been classified as indecent or which has been subject to restrictions under this Act should be made available to a limited class of persons or to a particular person for educational, professional, scientific,
25 literary, artistic, or technical purposes he may by writing under his hand exempt that class of persons or that person from the provisions of this Act in respect of that document or sound recording for such period and on such conditions as he thinks fit.

30 (2) In any prosecution for an offence against this Act the burden of proving that the defendant was exempted under this section and was acting in accordance with the terms of the exemption shall be on the defendant.

35 **30. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing forms and fees for the purposes of this Act:
- (b) Regulating the procedure of the Tribunal:

New

40 (bb) Regulating the procedure of the Supreme Court on any appeal or other matter dealt with by that Court under this Act:

(c) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

Cf. 1954, No. 78, s. 14

31. Repeals—The enactments specified in the Schedule to this Act are hereby repealed. 5

Section 31

SCHEDULE

ENACTMENTS REPEALED

- 1910, No. 19—The Indecent Publications Act 1910. (1957 Reprint, Vol. 6, p. 377.)
 1954, No. 78—The Indecent Publications Amendment Act 1954. (1957 Reprint, Vol. 6, p. 383.)
 1958, No. 16—The Indecent Publications Amendment Act 1958.
 1961, No. 43—The Crimes Act 1961: So much of the Fifth Schedule as relates to the Indecent Publications Act 1910.
 1961, No. 109—The Indecent Publications Amendment Act 1961.