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## RESTRICTED PUBLICATIONS ACT 1977

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### ANALYSIS

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## RESTRICTED PUBLICATIONS

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No. 73 of 1977

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**AN ACT to amend the Restricted Publications Act 1974 in relation to publications containing depictions of sexual and other activities involving children, publications containing depictions of acts of bestiality, and in relation to other matters.**

[12 October 1977]

**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:—

**1—(1)** This Act may be cited as the *Restricted Publications Act 1977*.

Short title,  
citation, and  
commencement.

(2) The *Restricted Publications Act 1974\** is in this Act referred to as the Principal Act.

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\* No. 103 of 1974.

(3) This Act shall commence on a day to be proclaimed.

Amendment of  
the long title.

**2** The long title to the Principal Act is amended by inserting after the word “publications;” the words “to prohibit the production of, and dealing with, publications containing depictions of acts of bestiality; to prohibit the production of, and certain dealings with, publications containing depictions of sexual activities involving children and other activities involving children;”.

Interpretation.

**3** Section 3 of the Principal Act is amended—

(a) by inserting in subsection (1), before the definition of “Board”, the following definition:—

“ ‘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 film 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;”;

(b) by inserting in that subsection, after the definition of “Board”, the following definitions:—

“ ‘child’ means a person who is under the age of 16 years;

“ ‘child abuse publication’ means a publication that contains a depiction of—

(a) a child who is engaged in an activity or pose of a sexual nature or who is in the presence of another person who is so engaged; or

(b) cruelty, violence, or revolting or abhorrent phenomena involving a child, whether or not the child’s involvement therein is active or passive;

“ ‘depiction’ means depiction by photograph or in any other pictorial manner;”;

(c) by inserting in that subsection, after the definition of “public place”, the following definitions:—

“ ‘Registrar’ means the Registrar of the Board;

“ ‘reproduce’, in relation to a child abuse publication or a prohibited publication within the meaning of Part V, means to reproduce that publication by means of printing, photographing, or recording or by any other means, whether of the same kind as those previously enumerated in this definition or not;”;

(d) by inserting in that subsection, after the definition of “restricted publication”, the following definition:—

“ ‘sell’ means sell, whether by wholesale or retail, and includes—

(a) offer or expose for sale;

(b) keep or have in possession for sale;

(c) barter or exchange;

(d) let on hire or offer to let on hire;

(e) deal in or agree to sell;

(f) send, forward, or deliver, for, or in expectation of receiving, any payment or other consideration; and

(g) receive for sale or on sale,

and ‘sale’ has a corresponding meaning;”;

(e) by omitting subsection (2) and substituting the following subsection:—

“(2) For the purposes of this Act, a person in a depiction in a child abuse publication shall be deemed to be a child if he manifestly appears so to be or if he is, expressly or by implication, so represented.”.

**4** Section 5 of the Principal Act is amended by inserting in paragraph (a) (i), after the word “that”, the words “, subject to Parts III, IV, and V,”.

Criteria to be applied by Board.

**5** Section 7 of the Principal Act is amended by inserting in subsection (4), after the word “perusal”, the words “or viewing”.

Board to classify publication as restricted publication.

**6** Section 8 of the Principal Act is amended by omitting from paragraph (b) the word “sale”.

Restrictions that may be imposed by the Board.

Notice in respect of a determination, &c.

**7** Section 10 of the Principal Act is amended—

- (a) by omitting from subsection (1) the word “ Notice ” and substituting the words “ Subject to subsection (1A), notice ”; and
- (b) by inserting after that subsection the following subsection:—
  - “(1A) A notice published by the Board in pursuance of this section—
    - (a) may contain notice of—
      - (i) any number of determinations referred to in subsection (1) (a);
      - (ii) the imposition of conditions in respect of any number of publications; or
      - (iii) the revocation of the classification of any number of publications as restricted publications; and
    - (b) is not required to state or give particulars of any title or name of a publication to which it relates but may specify such a publication by such means of distinguishing it as the Board may think suitable.”.

**8** After section 11 of the Principal Act the following section is inserted:—

Prohibition of sale, &c., of child abuse publications until determinations made by Board.

“ 11A—(1) Subject to this section and notwithstanding anything in section 7, no person—

- (a) shall sell, distribute, or deliver a child abuse publication, or cause or permit such a publication to be sold, distributed, or delivered;
  - (b) shall exhibit or display, or cause or permit to be exhibited or displayed, a child abuse publication in a public place;
  - (c) shall display, publish, or issue an advertisement relating to a child abuse publication or cause or permit such a publication to be displayed, published, or issued; or
  - (d) shall allow a young person to inspect or peruse a child abuse publication,
- at any time before the Board has made a determination under section 7 in relation to the publication.

Penalty: For a first offence, \$1 000 or imprisonment for 3 months or both; for a subsequent offence, \$10 000 or imprisonment for 6 months or both.

“(2) Subsection (1) (a) does not apply to the delivery of a child abuse publication to the Registrar or to a member of the Board or of the staff of the Board for the purpose of having a determination made under section 7 in relation to the publication.”.

**9** Section 12 of the Principal Act is amended by adding at the end the following subsection:— Handling, &c., of restricted publications.

“(5) A person who contravenes this section is guilty of an offence and is liable to a penalty of \$1 000 or imprisonment for 3 months or both.”.

**10** Section 13 of the Principal Act is amended—

- (a) by omitting subsection (2); and
- (b) by adding at the end of subsection (3) the words “or both”.

Prohibition of advertisement of restricted publications.

**11** Section 17 of the Principal Act—

- (a) is renumbered as section 13A and transposed to follow section 13 of the Principal Act; and
- (b) is amended by adding at the end of subsections (1) and (2) the words “or both”, in each case.

Offences.

**12** After section 13A of the Principal Act (as renumbered by section 11) the following Parts are inserted:—

#### “ PART IV

##### “ PROHIBITION AGAINST THE PRODUCTION OF, AND CERTAIN DEALINGS WITH, CHILD ABUSE PUBLICATIONS

“ 13B No person—

- (a) shall print, photograph, record, or make a child abuse publication, cause or permit such a publication to be printed, photographed, recorded, or made, or be in any way otherwise concerned in the printing, photographing, recording, or making of such a publication; or
- (b) shall reproduce a child abuse publication, cause or permit such a publication to be reproduced, or be in any way otherwise concerned in the reproducing of such a publication.

Prohibition against production and reproduction of child abuse publications.

Prohibition  
against  
procurement of  
certain acts

“ 13C A person who invites or procures or attempts to procure a child to be in any way concerned in the making of a child abuse publication is guilty of an offence.

Penalties.

“ 13D A person who is guilty of an offence under this Part is liable to a penalty of \$5 000 or to imprisonment for two years or both.

Prosecutions  
not to be  
brought in  
certain cases.

“ 13E No prosecution shall be brought under this Part in respect of a child abuse publication that the Board has determined—

- (a) should not be classified as a restricted publication; or
- (b) should be so classified and in respect of which conditions have been imposed under paragraphs (b), (c), (d), and (e) of section 8 or under any of those paragraphs.

#### “ PART V

“ PROHIBITION AGAINST THE PRODUCTION OF, AND DEALING WITH, PUBLICATIONS CONTAINING DEPICTIONS OF ACTS OF BESTIALITY

Interpretation.

“ 13F In this Part—

‘ bestiality ’ means carnal knowledge—

- (a) of an animal by a human being or an attempt by a human being to have carnal knowledge of that kind; or
- (b) of a human being by an animal or an attempt by an animal to have carnal knowledge of that kind;

‘ carnal knowledge ’ includes—

- (a) the penetration of a sexual organ by a sexual organ;
- (b) the penetration by a sexual organ of an orifice that is not the orifice of a sexual organ; and
- (c) the penetration of a sexual organ otherwise than by a sexual organ;

‘ prohibited publication ’ means a publication that contains a depiction of an act of bestiality or a depiction of a suggestion of an intention to effect or attempt to effect such an act.

Prohibition  
against  
production of,  
and dealing  
with,  
publications  
depicting  
bestiality.

“ 13G—(1) No person—

- (a) shall print, photograph, record, or make a prohibited publication, cause or permit such a publication to be printed, photographed, recorded, or made, or be in any way otherwise concerned in the printing, photographing, recording, or making of such a publication;



- (b) shall reproduce a prohibited publication, cause or permit such a publication to be reproduced, or be in any way otherwise concerned in the reproducing of such a publication;
- (c) shall sell a prohibited publication or cause or permit such a publication to be sold;
- (d) shall deliver or offer, or cause or permit to be delivered or offered, otherwise than by way of sale, a prohibited publication to a person in a public place, knowing or having reason to believe that the document is a prohibited publication;
- (e) shall deliver or leave, or cause or permit to be delivered or left, on premises in the occupation of any other person a prohibited publication, knowing or having reason to believe that the document is a prohibited publication;
- (f) shall deliver, or cause or permit to be delivered, to a person a prohibited publication with the intention that it should be so dealt with by that or any other person in such manner as to constitute an offence against this subsection;
- (g) shall exhibit, or cause or permit to be exhibited, a prohibited publication in a public place and whether or not in consideration or expectation of any payment or otherwise for gain, and whether any such payment is made by way of gratuity or otherwise;
- (h) shall display, publish, or issue an advertisement relating to a prohibited publication, or cause or permit such an advertisement to be displayed, published, or issued; or
- (i) shall allow a young person to inspect or peruse a prohibited publication.

“(2) A person who, whether for gain or otherwise, makes available to any other person a prohibited publication, knowing or having reason to believe that that other person is likely to reproduce that publication, is guilty of an offence if that other person reproduces that publication in whole or in part for any purpose.

“ 13H A person who invites or procures or attempts to procure a child to be in any way concerned in the making of a prohibited publication is guilty of an offence. Prohibition against procurement of certain acts.

“ 13J A person who is guilty of an offence—

Penalties.

- (a) under section 13G is liable to a penalty of \$2 000 or to imprisonment for 12 months or both; or

(b) under section 13H is liable to a penalty of \$5 000 or to imprisonment for two years or both.”.

Part VI,  
heading.

**13** The Principal Act is amended by inserting before section 14 the following heading:—

“ PART VI

“ MISCELLANEOUS ”.

Liability of  
principals.

**14** Section 14 of the Principal Act is amended by omitting the word “ Part ” (wherever occurring) and substituting, in each case, the word “ Act ”.

**15** After section 16 of the Principal Act the following section is inserted:—

Protection of  
members of  
Board,  
Registrar, and  
staff.

“ 17 A member of the Board, the Registrar, or a member of the staff of the Board is not personally liable in respect of anything done, or purportedly done, in good faith for the purposes of this Act or on account of any omission made in good faith in the execution of his functions under this Act.”.

Regulations.

**16** Section 18 of the Principal Act is amended by adding at the end the following subsection:—

“(2) Without prejudice to the generality of subsection (1), the regulations may exempt, or empower the Board to exempt upon application to it, any person or class of persons specified in the regulations from the operation of all or any of the provisions of this Act.”.

Expiry of Act.

**17** Section 19 of the Principal Act is repealed.

Transitional  
provisions.

**18** The provisions set out in the Schedule have effect for the purposes of the transition to the provisions of this Act from the law in force before the commencement of this Act.

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## THE SCHEDULE

(Section 18)

### TRANSITIONAL PROVISIONS

Transitional  
provisions  
relating to  
child abuse  
publications.

1—(1) A publication to which this paragraph applies and that has, before the commencement of this Act, been classified under the Principal Act as a restricted publication shall, on that commencement, be deemed not to have been so classified.

(2) On and after the commencement of this Act the provisions of section 11A of the Principal Act apply to and in relation to a publication referred to in sub-paragraph (1) and to and in relation to any act or dealing of a kind referred to in subsection (1) of that section with or in respect of that publication, until the Board makes a determination under section 7 of that Act in relation to that publication.

(3) An application by a person under section 7 of the Principal Act for a determination under that section in respect of a publication to which this paragraph applies shall be made to the Board within one month after the commencement of this Act.

(4) For the purposes of this paragraph, “a publication to which this paragraph applies” means a restricted publication—

- (a) in respect of which conditions have been imposed under paragraphs (b), (c), (d), and (e) of section 8 or under any of those paragraphs; and
- (b) of a kind that would, at the date when it was classified as a restricted publication, have been a child abuse publication if this Act had then been in force.

2—(1) A publication to which this paragraph applies and that has, before the commencement of this Act, been classified under the Principal Act as a restricted publication shall, on that commencement, be deemed not to have been so classified.

Transitional provisions relating to publications containing depictions of acts of bestiality.

(2) On and after the commencement of this Act the provisions of section 13G of the Principal Act apply to and in relation to a publication referred to in sub-paragraph (1) and to and in relation to any act or dealing of a kind referred to in that section with or in respect of that publication, except an act or dealing referred to in subsection (1) (a) of that section.

(3) For the purposes of this paragraph, “a publication to which this paragraph applies” means a restricted publication—

- (a) in respect of which conditions have been imposed under paragraphs (b), (c), (d), and (e) of section 8 or under any of those paragraphs; and
- (b) of a kind that would, at the date when it was classified as a restricted publication, have been a prohibited publication if this Act had then been in force.

