

**Reprint  
as at 1 August 2021**



## **Films, Videos, and Publications Classification Act 1993**

Public Act      1993 No 94  
Date of assent      26 August 1993  
Commencement      see section 1

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Department of Internal Affairs.**

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**An Act to consolidate and amend the law relating to the censoring of films, videos, books, and other publications; and to repeal the Indecent Publications Act 1963, the Films Act 1983, and the Video Recordings Act 1987**

**1 Short Title and commencement**

- (1) This Act may be cited as the Films, Videos, and Publications Classification Act 1993.
- (2) Sections 2 and 5, Part 6, section 149, and sections 174 to 177, and Schedule 1, shall come into force on the day after the date on which this Act receives the Royal assent.
- (3) Except as provided by subsection (2), this Act shall come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions and for different purposes.

Section 1(3): the rest of the Act brought into force, on 1 October 1994, by the Films, Videos, and Publications Classification Act Commencement Order 1994 (SR 1994/188).

**Part 1**  
**Preliminary provisions**

**2 Interpretation**

In this Act, unless the context otherwise requires,—

**advertising poster** means any poster, placard, photograph, or other printed pictorial matter that is intended for use in the advertising of any publication (other than a film) to the public; and includes a miniature representation of the whole

or part of any such poster; and also includes any enlarged representation of the whole or any part of any such poster

**approved self-rating system** means a system approved by the Chief Censor under section 46G for use by a specified CVoD provider to rate and label the provider's commercial video on-demand content

**authorised distributor**, in relation to a publication, means—

- (a) the person who appears to the Classification Office to be lawfully entitled to distribute the publication in New Zealand; or
- (b) where there is no such person, the owner of the publication

**Board of Review** or **Board** means the Film and Literature Board of Review established by section 91

**book**—

- (a) means any book, magazine, or periodical, whether in manuscript or final form; but
- (b) does not include a newspaper published at intervals of less than 1 month

**broadcasting** has the same meaning as in section 2 of the Broadcasting Act 1989

**cassette**, in relation to a video recording, means any case in which the video recording is kept and from which the video recording need not be removed in order for the video recording to be viewed

**Chief Censor** means the Chief Censor of Film and Literature appointed under section 80(1)

**classification** means the classification given to a publication under section 23 or section 55 or section 56

**Classification Office** means the Office of Film and Literature Classification established under section 76

**classification officer** means a person appointed as a classification officer pursuant to section 80(2)

**commercial video on-demand content**—

- (a) means video on-demand content that is made available to persons in New Zealand for a fee or other consideration; but
- (b) does not include video on-demand content that is made available on a platform provided by a broadcaster as part of a subscription-based television service if—
  - (i) the platform is only accessible by subscribers to the service; and
  - (ii) that content has been classified in accordance with a code of broadcasting practice issued or approved by the Broadcasting Standards Authority under section 21(1) of the Broadcasting Act 1989

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**Examples**

A movie that can be downloaded from the Internet by a person who pays a one-off fee to access that movie.

A series made available to a person who paid a subscription fee for access to a catalogue of content to be accessed through a computer or other electronic device.

A short film made available to a person who has been given access to a catalogue of online content as a benefit of entering into a contract with an Internet provider.

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**complaints officer** means a person designated under clause 3 of Schedule 1 as a complaints officer

**Deputy Chief Censor** means the Deputy Chief Censor of Film and Literature appointed under section 80(1)

**description** means the description of the contents of a film assigned to it under this Act

**display case**, in relation to a video recording, means any case or other container (other than a case or container that is not intended to be displayed to the public)—

- (a) in which the video recording is kept, or that is displayed, in any premises in which video recordings are supplied or offered for supply, to indicate that the video recording is available for supply; and
- (b) that shows the title of that video recording; and
- (c) that must be removed before the video recording can be viewed

**exhibit**, in relation to a sound recording, means to play that sound recording

**exhibit to the public**, in relation to a film,—

- (a) means to screen or arrange or organise the screening of, or to assist any other person to screen or arrange or organise the screening of, the film—
  - (i) to the public, or any section of the public; or
  - (ii) to any group or class of persons otherwise than in a private residence,—

whether or not a charge is made for admission to the premises in which the exhibition is held; but

- (b) does not include the broadcasting of the film;—

and **public exhibition** has a corresponding meaning

**film**—

- (a) means a cinematograph film, a video recording, and any other material record of visual moving images that is capable of being used for the subsequent display of those images, and includes any part of any film, and any copy or part of a copy of the whole or any part of a film; and
- (b) includes video on-demand content

**film poster**—

- (a) means any poster, placard, video slick, photograph, or other printed pictorial matter that is intended for use in the advertising or exhibition of any film to the public, and includes a miniature representation of the whole or part of any such poster, and also includes any enlarged representation of the whole or any part of any such poster; but
- (b) does not include a poster, placard, video slick, photograph, or other printed pictorial matter that is intended for use to advertise commercial video on-demand content

**Information Unit** means the Information Unit established under section 88

**Inspector** means an Inspector of Publications holding office under subsection (1) or subsection (2) of section 103; and includes a constable

**interim restriction order**,—

- (a) in Part 4, means an order made under section 49;
- (b) in Part 5, means an order made under section 67

**issue**, in relation to a serial publication, means a separately published part of that publication

**label** means a label issued in respect of a film or other publication under this Act

**labelling body** means the body for the time being approved by the Minister under section 72

**Minister** means the Minister of Internal Affairs

**newspaper** means any periodical publication published (whether in New Zealand or elsewhere) at intervals not exceeding 40 days, or any copy of, or part of any copy of, any such publication; and includes every publication that at any time accompanies and is distributed along with any newspaper

**objectionable** has the meaning given to it in section 3

**package** includes anything in which goods may be cased, covered, enclosed, contained, or packed

**premises** means any building, enclosure, ground, or open-air space

**printed matter** means any book, letterpress, lithograph, newspaper, pamphlet, paper, periodical, photograph, picture, print, or other reproduction; but does not include any reproduction of a purely business, commercial, official, professional, religious, scholastic, social, or trading character

**private residence** means a place of residence of any person in respect of which that person has the exclusive right of occupation; and includes—

- (a) private rooms in any hotel, hostel, apartment building, or boardinghouse; and
- (b) motel units, cabins, and baches; and

(c) any other places of temporary residence,—  
whether self-contained or not

**public display**,—

- (a) in relation to a publication, means the display of that publication in a public place in circumstances that may reasonably be taken to indicate that the publication is available for supply:
- (b) in relation to an advertising poster or a film poster, means the display of the poster in a public place in circumstances that may reasonably be taken to indicate that the publication to which the poster relates is available for supply

**public place** has the same meaning as in section 2 of the Summary Offences Act 1981

**publication** means—

- (a) any film, book, sound recording, picture, newspaper, photograph, photographic negative, photographic plate, or photographic slide:
- (b) any print or writing:
- (c) a paper or other thing that has printed or impressed upon it, or otherwise shown upon it, 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words:
- (d) a thing (including, but not limited to, a disc, or an electronic or computer file) on which is recorded or stored information that, by the use of a computer or other electronic device, is capable of being reproduced or shown as 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words

**rating** means the description of the audience for which a film is suitable (as determined in accordance with regulations made under this Act) assigned to a film under this Act

**register** means the register of classification decisions established and maintained under section 39

**restricted publication** means a publication that is classified under section 23(2)(c)

**search warrant** means a warrant issued under section 109 or section 109A or section 109B

**Secretary** means the Secretary for Internal Affairs

**serial publication**—

- (a) means—
  - (i) a magazine or periodical published at substantially regular intervals:

(ii) any printed publication divided into parts that are published separately at intervals; but

(b) does not include a newspaper published at intervals of less than 1 month

**serial publication order** means an order made under section 37(1)

**specified CVoD provider** means—

(a) a company listed in Schedule 4, to the extent that the company makes commercial video on-demand content available in New Zealand; and

(b) a subsidiary of a company listed in Schedule 4, if that subsidiary makes commercial video on-demand content available in New Zealand

**supply** means to sell, or deliver by way of hire, or offer for sale or hire

**supply to the public**, in relation to a film,—

(a) means supply by way of sale, hire, exchange, or loan, in the course of any business; and includes sale, hire, exchange, or loan by—

(i) any public library; or

(ii) any club or association, whether public or private, and whether incorporated or unincorporated, that, as part of its activities, makes films available to its members; but

(b) does not include any supply of any film to any person who makes or distributes or supplies films, unless that person intends to supply that film to the public or, in the case of a club or association to which paragraph (a)(ii) applies, to its members;—

and **public supply** has a corresponding meaning

**video game** means any video recording that is designed for use wholly or principally as a game

**video on-demand content** means content, in the form of visual images produced electronically and shown as a moving picture, that is made available to persons on-demand using a computer or other electronic device

**video recording** means any disc, magnetic tape, or solid state recording device containing information by the use of which 1 or more series of visual images may be produced electronically and shown as a moving picture

**video slick**, in relation to a video recording, means any leaflet or notice (whether with or without illustrations or photographs) that contains information about the video recording and is intended to be affixed to, or inserted inside any sleeve of, any display case

**wholesale distributor** means any person who imports for sale in New Zealand otherwise than to the public any printed matter published outside New Zealand

**working day** means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

- (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
- (b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

Section 2 **approved self-rating system**: inserted, on 10 August 2020, by section 4(1) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 2 **commercial video on-demand content**: inserted, on 10 August 2020, by section 4(1) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 2 **film**: replaced, on 1 August 2021, by section 4(2) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 2 **film poster**: replaced, on 1 August 2021, by section 4(3) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 2 **Inspector**: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 2 **label**: amended, on 21 May 2005, by section 3(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 2 **newspaper**: substituted, on 27 April 1995, by section 3 of the Newspapers and Printers Act Repeal Act 1995 (1995 No 13).

Section 2 **printed matter**: substituted, on 27 April 1995, by section 4(1) of the Newspapers and Printers Act Repeal Act 1995 (1995 No 13).

Section 2 **publication** paragraph (c): substituted, on 22 February 2005, by section 3(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 2 **publication** paragraph (d): added, on 22 February 2005, by section 3(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 2 **register**: amended, on 1 October 2012, by section 4 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 2 **search warrant**: amended, on 22 February 2005, by section 23(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 2 **specified CVoD provider**: inserted, on 10 August 2020, by section 4(1) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 2 **video on-demand content**: inserted, on 10 August 2020, by section 4(1) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 2 **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

### 3 Meaning of objectionable

- (1) For the purposes of this Act, a publication is **objectionable** if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.
- (1A) Without limiting subsection (1), a publication deals with a matter such as sex for the purposes of that subsection if—

- (a) the publication is or contains 1 or more visual images of 1 or more children or young persons who are nude or partially nude; and
  - (b) those 1 or more visual images are, alone, or together with any other contents of the publication, reasonably capable of being regarded as sexual in nature.
- (1B) Subsection (1A) is for the avoidance of doubt.
- (2) A publication shall be deemed to be objectionable for the purposes of this Act if the publication promotes or supports, or tends to promote or support,—
- (a) the exploitation of children, or young persons, or both, for sexual purposes; or
  - (b) the use of violence or coercion to compel any person to participate in, or submit to, sexual conduct; or
  - (c) sexual conduct with or upon the body of a dead person; or
  - (d) the use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct; or
  - (e) bestiality; or
  - (f) acts of torture or the infliction of extreme violence or extreme cruelty.
- (3) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, particular weight shall be given to the extent and degree to which, and the manner in which, the publication—
- (a) describes, depicts, or otherwise deals with—
    - (i) acts of torture, the infliction of serious physical harm, or acts of significant cruelty:
    - (ii) sexual violence or sexual coercion, or violence or coercion in association with sexual conduct:
    - (iii) other sexual or physical conduct of a degrading or dehumanising or demeaning nature:
    - (iv) sexual conduct with or by children, or young persons, or both:
    - (v) physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain:
  - (b) exploits the nudity of children, or young persons, or both:
  - (c) degrades or dehumanises or demeans any person:
  - (d) promotes or encourages criminal acts or acts of terrorism:
  - (e) represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic of members of that class, being a



characteristic that is a prohibited ground of discrimination specified in section 21(1) of the Human Rights Act 1993.

- (4) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, the following matters shall also be considered:
- (a) the dominant effect of the publication as a whole:
  - (b) the impact of the medium in which the publication is presented:
  - (c) the character of the publication, including any merit, value, or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific, or other matters:
  - (d) the persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available:
  - (e) the purpose for which the publication is intended to be used:
  - (f) any other relevant circumstances relating to the intended or likely use of the publication.

Section 3(1A): inserted, on 22 February 2005, by section 4(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 3(1B): inserted, on 22 February 2005, by section 4(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 3(3): amended, on 22 February 2005, by section 4(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 3(4): amended, on 22 February 2005, by section 4(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

### **3A Publication may be age-restricted if it contains highly offensive language likely to cause serious harm**

- (1) A publication to which subsection (2) applies may be classified as a restricted publication under section 23(2)(c)(i).
- (2) This subsection applies to a publication that contains highly offensive language to such an extent or degree that the availability of the publication would be likely, if not restricted to persons who have attained a specified age, to cause serious harm to persons under that age.
- (3) In this section, **highly offensive language** means language that is highly offensive to the public in general.

Section 3A: inserted, on 22 February 2005, by section 5 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

### **3B Publication may be age-restricted if likely to be injurious to public good for specified reasons**

- (1) A publication to which subsection (2) applies may be classified as a restricted publication under section 23(2)(c)(i).

- (2) This subsection applies to a publication that contains material specified in subsection (3) to such an extent or degree that the availability of the publication would, if not restricted to persons who have attained a specified age, be likely to be injurious to the public good for any or all of the reasons specified in subsection (4).
- (3) The material referred to in subsection (2) is material that—
- (a) describes, depicts, expresses, or otherwise deals with—
    - (i) harm to a person’s body whether it involves infliction of pain or not (for example, self-mutilation or similarly harmful body modification) or self-inflicted death; or
    - (ii) conduct that, if imitated, would pose a real risk of serious harm to self or others or both; or
    - (iii) physical conduct of a degrading or dehumanising or demeaning nature; or
  - (b) is or includes 1 or more visual images—
    - (i) of a person’s body; and
    - (ii) that, alone, or together with any other contents of the publication, are of a degrading or dehumanising or demeaning nature.
- (4) The reasons referred to in subsection (2) are that the general levels of emotional and intellectual development and maturity of persons under the specified age mean that the availability of the publication to those persons would be likely to—
- (a) cause them to be greatly disturbed or shocked; or
  - (b) increase significantly the risk of them killing, or causing serious harm to, themselves, others, or both; or
  - (c) encourage them to treat or regard themselves, others, or both, as degraded or dehumanised or demeaned.

Section 3B: inserted, on 22 February 2005, by section 5 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

### **3C Procedure for classification under sections 3A and 3B**

In determining whether to classify a publication as a restricted publication in accordance with section 3A or section 3B, the Classification Office must consider the matters specified in paragraphs (a) to (f) of section 3(4).

Section 3C: inserted, on 22 February 2005, by section 5 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

### **3D How sections 3A and 3B relate to sections 3 and 23(2)(c)**

Sections 3A and 3B are not limited by section 3, and do not limit the Classification Office’s power under sections 3 and 23(2)(c) to classify a publication as a restricted publication.

Section 3D: inserted, on 22 February 2005, by section 5 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

#### **4 Classification of publications a matter of expert judgment**

- (1) The question whether or not a publication is objectionable or should in accordance with section 23(2) be given a classification other than objectionable is a matter for the expert judgment of the person or body authorised or required, by or pursuant to this Act, to determine it, and evidence as to, or proof of, any of the matters or particulars that the person or body is required to consider in determining that question is not essential to its determination.
- (2) Without limiting subsection (1), where evidence as to, or proof of, any such matters or particulars is available to the body or person concerned, that body or person shall take that evidence or proof into consideration.

Section 4 heading: amended, on 22 February 2005, by section 7(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 4(1): amended, on 22 February 2005, by section 7(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

#### **4A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 4A: inserted, on 10 August 2020, by section 5 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **5 Act to bind the Crown**

This Act binds the Crown.

## **Part 2 Labelling of films**

### *Labelling requirements*

#### **6 Films to be labelled**

- (1) Subject to sections 7 and 8, a film must not be supplied to the public or offered for supply to the public unless—
  - (a) a label has been issued in respect of that film; and
  - (b) the requirements of this Act and of any regulations made under this Act with respect to the display of that label are complied with.
- (2) Subject to sections 7 and 8, a film must not be exhibited to the public unless—
  - (a) a label has been issued in respect of that film; and
  - (b) the requirements of this Act and of any regulations made under this Act with respect to the display and advertising of the contents of that label are complied with.

- (3) Subsections (1) and (2) do not apply to a film that is commercial video on-demand content offered by a specified CVoD provider, and section 46C applies instead.

Compare: 1983 No 130 ss 7, 8; 1987 No 85 s 5

Section 6(1)(b): replaced, on 1 October 2012, by section 5(1) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 6(2)(b): replaced, on 1 October 2012, by section 5(2) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 6(3): inserted, on 1 August 2021, by section 11 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

## 7 Trade screenings

Section 6 does not apply in respect of the private screening, for commercial purposes, of any film where—

- (a) that screening is by—
- (i) the maker, owner, or distributor of the film; or
  - (ii) an expressly authorised agent of the maker, owner, or distributor; and
- (b) that screening is to any person engaged in the film industry, or in any industry closely associated with the film industry; and
- (c) that screening is carried out in accordance with normal trade practice before the maker, owner, or distributor applies for the issue of a label in respect of the film.

Compare: 1983 No 130 s 6

## 8 Films exempt from labelling requirements

- (1) Subject to subsections (2) and (3), sections 6 and 46C do not apply in respect of any of the following films:
- (a) any film owned, produced, or sponsored by, and relating to the policy, functions, or operations of,—
- (i) any government department named in Part 1 of Schedule 1 of the Ombudsmen Act 1975:
  - (ii) any organisation named in Part 2 of Schedule 1 of the Ombudsmen Act 1975 or in Schedule 1 of the Official Information Act 1982:
  - (iii) any local organisation named or specified in Part 3 of Schedule 1 of the Ombudsmen Act 1975:
- (b) any film directly related wholly or principally to personnel training and development, or public, business, or industrial administration, management, and organisation:
- (c) any film depicting wholly or principally agricultural, industrial, or manufacturing processes or technological development:

- (d) any pure, applied, physical, or natural scientific film:
  - (e) any film relating wholly or mainly to the social sciences, including economics, geography, anthropology, and linguistics:
  - (f) any natural history film, and any film depicting wholly or principally natural scenery:
  - (g) any film of news and current affairs, any documentary, and any historical account containing a unity of subject matter:
  - (h) any film depicting wholly or principally sporting events or recreational activities:
  - (i) any film that is designed to provide a record of an event or occasion (such as a wedding) for those who took part in the event or occasion or are connected with those who did so:
  - (j) any film depicting wholly or mainly surgical or medical techniques and used for educational and instructional purposes:
  - (k) any film that is wholly or mainly a commercial advertisement relating to the advertiser's or sponsor's activities:
  - (l) any film directly related to the curriculum of pre-school, primary, secondary, or tertiary educational institutions:
  - (m) any film wholly or mainly of a religious nature:
  - (n) any film depicting wholly or mainly travel:
  - (o) any film depicting wholly or mainly cultural activities:
  - (p) any film intended for supply or exhibition solely to ethnic organisations:
  - (q) any video game:
  - (r) any video on-demand content made available by a person who is not a specified CVoD provider:
  - (s) any video on-demand content made available by a specified CVoD provider that was uploaded by a user to the provider's platform, and that was not commissioned by the provider.
- (2) The Chief Censor may, at any time, require any person to make an application under section 9 for the issue of a label in respect of a film of a class mentioned in subsection (1) if,—
- (a) in the case of video on-demand content, the person has made the content available to persons in New Zealand, or proposes to do so; or
  - (b) in any other case, the person has exhibited or supplied the film to the public, or proposes to do so.
- (3) Nothing in subsection (1) exempts any film from the requirements of section 6 or 46C if—
- (a) the film is a restricted publication; or

- (b) the Chief Censor has required the film to be submitted to the labelling body under subsection (2).

Compare: 1983 No 130 ss 9–12; 1987 No 85 s 6; 1990 No 58 s 4

Section 8(1): amended, on 1 August 2021, by section 6(1) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 8(1)(r): inserted, on 1 August 2021, by section 6(2) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 8(1)(s): inserted, on 1 August 2021, by section 6(2) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 8(2): replaced, on 1 August 2021, by section 6(3) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 8(3): amended, on 1 August 2021, by section 6(4) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

### *Issue of labels*

## **9 Applications for issue of label**

- (1) Subject to subsection (2), the following persons may apply to the labelling body for the issue of a label in respect of a film:
- (a) any person who is engaged in the production, distribution, public supply, or public exhibition of films:
  - (b) any person who proposes to supply to the public or exhibit to the public the film in respect of which the application is made:
  - (c) any specified CVoD provider.
- (2) Subsection (1) does not apply to—
- (a) any film in respect of which a label has already been issued under this Act (except any film for which a label has been issued by a specified CVoD provider using an approved self-rating system); or
  - (b) any film that has been classified under this Act as objectionable.
- (3) Subject to subsection (4), every application under subsection (1) shall be accompanied by—
- (a) a copy of the film in respect of which the application is made; and
  - (b) the fee set by the labelling body for such an application.
- (4) The labelling body may, in accordance with regulations made under this Act, exempt any applicant from the requirements of subsection (3)(a).

Compare: 1983 No 130 s 8; 1987 No 85 s 12

Section 9(1)(c): inserted, on 1 August 2021, by section 12(1) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 9(2): replaced, on 1 August 2021, by section 12(2) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

## **10 Issue of labels**

- (1) Subject to any regulations made under this Act, on receiving an application under section 9(1), the labelling body shall, as soon as practicable, examine the film and, subject to subsection (3) and to section 12, shall issue a label in respect of that film.
- (2) The label shall contain—
  - (a) the rating assigned to that film by the labelling body; and
  - (b) where appropriate, a description of the contents of that film indicating whether the film contains anti-social behaviour, cruelty, violence, crime, horror, sex, or offensive language or behaviour.
- (3) The labelling body shall not issue a label in respect of any film that has been classified by the Classification Office or the Board as objectionable.

Compare: 1987 No 85 s 13

## **11 Rating and description applicable to copies**

For the purposes of this Part, the rating and description (if any) assigned to any film under section 10 shall apply to every copy of that film that is identical in content with it, whether or not the copy is in a different gauge or a different technical form.

Compare: 1983 No 130 s 8(5)–(8); 1987 No 85 s 13(3)

## **11A Classification Office must provide film database**

- (1) The Classification Office must provide and maintain a database of films that have been labelled under this Act and that includes the prescribed information in respect of each film.
- (2) The Classification Office must make the database available for public inspection at all reasonable times, free of charge, by publishing it on an Internet site maintained by, or on behalf of, the Classification Office.

Section 11A: inserted, on 1 August 2021, by section 13 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

# **Part 3 Classification of publications**

## *Submission of publications*

## **12 Submission of films by labelling body**

- (1) Where—
  - (a) an application is made under section 9(1) in respect of a film; and
  - (b) the labelling body is not permitted, under regulations made under this Act, to assign a rating to that film,—

the labelling body shall submit that film to the Classification Office for examination and classification pursuant to section 23.

- (1A) However, the labelling body is not required by subsection (1) to submit a film to the Classification Office if—
- (a) an item on the film has been classified under this Act as a restricted publication; and
  - (b) all other material included on the film is material to which the labelling body would, in accordance with regulations made under this Act, be permitted to assign a rating; and
  - (c) the labelling body may, without a direction of the Classification Office under section 36, but in accordance with regulations made under this Act, issue in respect of the film a label containing the classification of, and any description assigned to, the item.
- (2) Where—
- (a) the labelling body is having substantial difficulty in determining the appropriate rating to assign to a film; or
  - (b) there is disagreement among the persons who are carrying out the functions of the labelling body on the appropriate rating to assign to a film,—
- the labelling body may, subject to subsection (3), submit that film to the Classification Office for examination and classification pursuant to section 23.
- (3) The labelling body may submit a film to the Classification Office under subsection (2) only with the leave of the Chief Censor. That leave may be obtained on application made on the form provided for that purpose by the Chief Censor.
- (4) Where the Classification Office directs, under section 36, that a label should be issued in respect of any film submitted to it under subsection (1) or subsection (2), the labelling body shall issue a label in accordance with the direction of the Classification Office.

Compare: 1987 No 85 s 15

Section 12(1A): inserted, on 22 February 2005, by section 8 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

### **13 Submission of publications by others**

- (1) Any of the following persons may submit a publication to the Classification Office for a decision on that publication's classification:
- (a) the chief executive of the New Zealand Customs Service;
  - (ab) the Commissioner of Police;
  - (b) the Secretary;
  - (c) subject to subsection (2), any other person.
- (2) A publication may be submitted to the Classification Office under subsection (1)(c) only with the leave of the Chief Censor given under section 15.



- (3) The Chief Censor may, on his or her own motion, determine that any publication should be received for examination by the Classification Office. In any such case the Chief Censor shall, by notice in writing, direct the chief executive of the New Zealand Customs Service or the Secretary to take all reasonable steps to obtain a copy of the publication and submit it to the Classification Office under paragraph (a) or, as the case requires, paragraph (b) of subsection (1).

Compare: 1963 No 22 s 14(1), (2); 1987 No 85 s 19(1)–(3)

Section 13(1)(a): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 13(1)(ab): inserted, on 22 February 2005, by section 9 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 13(3): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

#### **14 How to submit publications (officials)**

- (1) A publication shall be submitted to the Classification Office under subsection (1)(a) or (b) of section 13 by lodging a notice of submission in the prescribed manner with the Classification Office.
- (2) Every notice of submission shall be in the form provided for that purpose by the Chief Censor.
- (3) Every notice of submission lodged with the Classification Office shall be accompanied by—
- (a) the prescribed fee (if any); and
  - (b) a copy of the publication to which the notice relates.

Compare: 1963 No 22 s 14(4); 1987 No 85 s 19(4)

#### **15 How to submit publications (others)**

- (1) Every person who wishes to submit a publication to the Classification Office under section 13(1)(c) shall lodge a notice of submission in the prescribed manner with the Classification Office.
- (2) Every notice of submission shall be in the form provided for that purpose by the Chief Censor and shall be accompanied by the prescribed fee (if any).
- (3) Subject to section 16, on receiving a notice of submission lodged under this section, the Chief Censor shall decide whether or not to give leave for the publication to be submitted to the Classification Office.
- (4) Where the Chief Censor grants leave under this section in relation to a publication, the publication shall be deemed to have been submitted to the Classification Office for a decision on that publication's classification.
- (5) Where, in relation to a publication, the Chief Censor grants, or refuses to grant, leave under this section, the Chief Censor shall give written notice of—
- (a) that decision; and

- (b) in the case of a refusal to grant leave, the reasons for that decision,—  
to the person who lodged the notice of submission.
- (6) Where, in relation to a publication, the Chief Censor refuses to grant leave under this section, every person shall, on request, and on payment of such fee (if any) as the Classification Office may determine, be entitled to a copy of the notice given pursuant to subsection (5) in relation to that refusal.

Compare: 1963 No 22 s 14(3), (4); 1987 No 85 s 19(4), (5)

#### **16 Referral of notice of submission to complaints officer**

- (1) Notwithstanding anything in subsection (3) of section 15, where a notice of submission is lodged under that section, the Chief Censor may, in his or her discretion, refer the notice to a complaints officer.
- (2) On any such referral, the complaints officer shall—
- (a) consider the publication; and
  - (b) determine whether or not, in his or her opinion, the Chief Censor should give leave under section 15 for the publication to be submitted to the Classification Office; and
  - (c) report his or her opinion to the Chief Censor.
- (3) In making a determination under subsection (2), the complaints officer shall have regard to any guidelines issued for the purpose by the Chief Censor.
- (4) Where the Chief Censor receives a report under subsection (2)(c) in relation to a publication, the Chief Censor shall take the recommendation in that report into consideration in deciding, under section 15, whether or not to grant leave for the publication to be submitted to the Classification Office.

#### **17 Submission to lapse if publication unobtainable**

- (1) Where a notice of submission relating to a publication is lodged with the Classification Office under section 15(1), and a copy of that publication is not submitted to the Classification Office, the Classification Office shall take all reasonable steps to obtain a copy of the publication.
- (2) If the Classification Office, after taking such steps as are required by subsection (1), is unable to obtain a copy of the publication, that notice of submission shall lapse, and the Classification Office shall notify the person who submitted that notice accordingly.

Compare: 1987 No 85 s 19(6), (7)

#### **18 Publication not adaptable to equipment in Classification Office**

If any publication submitted under section 12 or section 13 or section 42 is not adaptable to the equipment in the Classification Office, the Classification Office may, except where section 17(1) applies, require the person submitting the publication to make it available for examination by the Classification

Office at such place as the Classification Office directs, and to pay all or any of the costs associated with the examination of the publication at that place.

Compare: 1987 No 85 s 19(8)

## **19 Notification of submission**

- (1) This section applies if a person (the **submitter**) submits a publication to the Classification Office under section 13.
- (2) The Chief Censor must immediately determine the notice of the submission that is to be given to any person (other than the submitter) who the Chief Censor reasonably believes should be given notice of the submission by reason of that person's interest in the publication (being an interest as owner, maker, distributor, or publisher of the publication).
- (3) The Chief Censor may, before the publication has been classified by the Classification Office, determine—
  - (a) that notice of the submission is to be given to any other specified person or class of persons, in a manner and within a time the Chief Censor specifies:
  - (b) that the fact that the submission has been made is to be publicised, in a manner and within a time the Chief Censor specifies.
- (4) Having determined under subsection (2) or subsection (3) that notice is to be given or that a fact is to be publicised, unless subsection (5) applies the Chief Censor must direct the submitter to give that notice or to publicise that fact.
- (5) The Chief Censor must arrange for the Classification Office to give that notice or to publicise that fact if satisfied that giving that notice or publicising that fact would place an undue burden on the submitter.

Section 19: substituted, on 22 February 2005, by section 10(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

## **20 Right to make submissions**

- (1) The following persons may make written submissions to the Classification Office in respect of the classification of any publication submitted to the Classification Office under section 13:
  - (a) the Secretary:
  - (b) the person who submitted the publication:
  - (c) any person who is notified under section 19(4) or (5):
  - (d) such other persons who satisfy the Chief Censor that they are likely to be affected by the classification of the publication.
- (2) Where a publication is referred to the Classification Office under section 29(1) or section 41(3), every person who is a party to the proceeding in respect of

which that referral is made shall have the right to make written submissions to the Classification Office in respect of the classification of that publication.

Compare: 1963 No 22 s 14(6)

Section 20(1)(c): amended, on 22 February 2005, by section 10(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

## **21 Other assistance**

- (1) In examining any publication for the purposes of this Part, the Classification Office may show the publication to any person whom the Classification Office considers may be able to assist the Office in forming an opinion of the publication on which to base the decision of the Classification Office in respect of the publication.
- (2) Nothing in this Act relating to the exhibition or display of publications shall apply to the exhibition or display of a publication by or at the request of the Classification Office for the purposes of subsection (1).
- (3) In examining any publication for the purposes of this Part, the Classification Office may—
  - (a) invite such persons as it thinks fit to make written submissions to the Classification Office in relation to the publication:
  - (b) obtain information from such persons, and make such inquiries, as it thinks fit.

Compare: 1983 No 130 s 14; 1987 No 85 s 22

## **22 No right to be heard**

It shall not be necessary for the Classification Office to hold any hearing, nor, subject to section 20, shall any person have the right to appear before, or to be heard by, or to make submissions to, the Classification Office in relation to any matter that is before that Office.

### *Examination and classification of publications*

## **23 Examination and classification**

- (1) As soon as practicable after a publication has been submitted or referred to the Classification Office under this Act, the Classification Office shall examine the publication to determine the classification of the publication.
- (2) After examining a publication, and having taken into account the matters referred to in sections 3 to 3D, the Classification Office shall classify the publication as—
  - (a) unrestricted; or
  - (b) objectionable; or
  - (c) objectionable except in any 1 or more of the following circumstances:

- (i) if the availability of the publication is restricted to persons who have attained a specified age not exceeding 18 years:
  - (ii) if the availability of the publication is restricted to specified persons or classes of persons:
  - (iii) if the publication is used for 1 or more specified purposes.
- (3) Without limiting the power of the Classification Office to classify a publication as a restricted publication, a publication that would otherwise be classified as objectionable may be classified as a restricted publication in order that the publication may be made available to particular persons or classes of persons for educational, professional, scientific, literary, artistic, or technical purposes.

Compare: 1963 No 22 s 10; 1983 No 130 s 15(1), (2); 1987 No 85 s 23(1)

Section 23(2): amended, on 22 February 2005, by section 11(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 23(2)(c)(i): amended, on 22 February 2005, by section 11(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

#### **24 Soundtrack to be considered**

Where a film is intended to be viewed with an accompanying soundtrack (whether or not the soundtrack is an integral part of the film), an examination of the film under section 23 shall also take into account the content of the soundtrack and its relationship to the film.

Compare: 1983 No 130 s 13(5); 1987 No 85 s 21(4)

#### **25 Classification Office may copy film**

- (1) Where the Classification Office examines any film under this Part, it may make 1 copy of that film, and any accompanying soundtrack, for the purposes of comparing that copy with any film that it subsequently examines.
- (2) The making of a copy of any film or any soundtrack under this section shall not constitute an infringement of the copyright (if any) in that film or soundtrack or in any material incorporated in that film or soundtrack.

Compare: 1987 No 85 s 21(5), (6)

#### **26 Classification applies to identical copies**

For the purposes of this Act, the classification given to a publication under section 23 or section 55 or section 56 shall apply to every copy of that publication that is identical in content with it.

Compare: 1987 No 85 s 23(2)

#### **27 Conditions relating to display of restricted publications**

- (1) Where, pursuant to this Part, the Classification Office classifies any publication as a restricted publication, the Classification Office shall in every case consider whether or not conditions in respect of the public display of that publication

should be imposed pursuant to this section, and may, at the time of classifying that publication, impose such conditions.

- (2) In determining whether or not to impose conditions pursuant to this section, and in determining the conditions that it should impose, the Classification Office shall have regard to the following matters:
  - (a) the reasons for classifying the publication as a restricted publication:
  - (b) the terms of the classification given to the publication:
  - (c) the likelihood that the public display of the publication, if not subject to conditions or, as the case may be, any particular condition, would cause offence to reasonable members of the public.
- (3) Where the Classification Office considers that the public display of the publication, if not subject to conditions under this section, would be likely to cause offence to reasonable members of the public, the Classification Office shall, at the time of classifying that publication, impose such conditions under this section in respect of the public display of that publication as it considers necessary to avoid the causing of such offence.
- (4) The conditions that may be imposed pursuant to this section in respect of the public display of a publication (other than a film) are as follows:
  - (a) that, when the publication is on public display, the classification given to the publication must be shown by way of a label—
    - (i) issued in accordance with a direction under section 36A(2); and either
    - (ii) displayed on the publication in a manner specified by the Classification Office; or
    - (iii) brought in some other, more practical or convenient way to the attention of persons to whom the publication is displayed in a manner specified by the Classification Office:
  - (b) that the publication must be publicly displayed only in a sealed package:
  - (c) that where the publication is publicly displayed in a package, the package must be made of opaque material:
  - (d) that—
    - (i) the publication; or
    - (ii) any advertising poster relating to the publication,—or both, must be publicly displayed only in premises, or a part of premises, set aside for the public display of restricted publications (whether or not articles other than restricted publications are also displayed in those premises or that part of those premises):
  - (e) that—
    - (i) the publication; or

- (ii) any advertising poster relating to the publication,—  
or both, must not be publicly displayed in any place in which the publication is available for supply, and must be shown in that place only to persons who make a direct request for the publication or, as the case requires, the poster.
- (5) The conditions that may be imposed pursuant to this section in respect of the public display of a film (other than a film that is video on-demand content) are as follows:
  - (a) that—
    - (i) the film; or
    - (ii) any film poster relating to the film (whether or not the poster is attached to the cassette, case, or other container in which the film is kept),—  
or both, must be publicly displayed only in premises, or a part of premises, set aside for the public display of restricted publications (whether or not articles other than restricted publications are also displayed in those premises or that part of those premises):
  - (b) that the film, or any cassette, case, or other container in which the film is kept, must be publicly displayed only in a package made of opaque material:
  - (c) that—
    - (i) the film; or
    - (ii) any film poster relating to the film (whether or not the poster is attached to the cassette, case, or other container in which the film is kept),—  
or both, must not be publicly displayed in any place in which the film is available for supply, and must be shown in that place only to persons who make a direct request for the film or, as the case requires, the poster.
- (6) The conditions that may be imposed pursuant to this section in respect of the display of advertising material for video on-demand content that has a restricted classification are as follows:
  - (a) that the advertisement must indicate the classification and any description assigned to the content by way of a label displayed in a manner specified by the Classification Office:
  - (b) that the advertisement may only be displayed, broadcast, or otherwise published, or must not be displayed, broadcast, or published—
    - (i) in places or media specified by the Classification Office:
    - (ii) at or between times specified by the Classification Office:
    - (iii) in association with other advertising or media content of a type specified by the Classification Office:

(iv) in circumstances specified by the Classification Office.

Section 27(4)(a): substituted, on 21 May 2005, by section 12(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 27(4)(a)(ii): amended, on 1 October 2012, by section 6 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 27(5): amended, on 1 August 2021, by section 14(1) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 27(6): inserted, on 1 August 2021, by section 14(2) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

## **28 Further provisions relating to conditions on public display of restricted publications**

- (1) Any 1 or more of the conditions specified in subsection (4) or, as the case may require, subsection (5) of section 27 may be imposed in respect of a publication, and, without limiting the generality of the foregoing, any 2 or more conditions may be expressed as alternatives.
- (2) Subject to subsections (2) and (3) of section 27, in determining whether to impose, or in imposing, in respect of a publication other than a book or a newspaper, the condition specified in section 27(4)(a), the Classification Office shall have regard to the nature of the publication.
- (3) Nothing in section 27(5) limits or affects the powers of the Classification Office to examine or approve film posters under any regulations made under this Act.
- (4) For the purposes of this Act, a condition imposed pursuant to subsection (4)(e) or subsection (5)(c) of section 27 prohibiting the public display of any thing in any place shall, in so far as the condition relates to the public display of that thing in any premises, prohibit the public display of that thing not only in those premises but also—
  - (a) on the exterior of those premises:
  - (b) in the immediate vicinity of those premises.

### *Referral of publications by courts*

## **29 Character of publications arising in court proceedings**

- (1) Except as provided in subsections (2) and (3), where in any civil or criminal proceedings before a court (including any proceedings under section 116 but not including proceedings under section 67) a question arises whether any publication—
  - (a) is objectionable; or
  - (b) is objectionable except in any 1 or more of the following circumstances:
    - (i) if the availability of the publication is restricted to persons who have attained a specified age:



- (ii) if the availability of the publication is restricted to specified persons or classes of persons:
  - (iii) if the publication is used for 1 or more specified purposes,—  
the court shall refer the question to the Classification Office for decision, and the Classification Office shall have exclusive jurisdiction to determine the question.
- (2) Where in any civil or criminal proceedings the defendant admits that a publication—
  - (a) is objectionable; or
  - (b) is objectionable except in any 1 or more of the circumstances referred to in subsection (1)(b),—  
the court may accept that admission and dispense with a reference to the Classification Office.
- (3) Where the Classification Office or the Board has classified a publication under this Act, the production in any proceedings of a copy, certified by the Classification Office, of the entry in the register recording that decision, together with a certificate from the Classification Office that the decision is still in force, shall be sufficient proof in any court of the decision, and if that decision is conclusive proof of the classification of that publication under section 41, the court shall dispense with a reference to the Classification Office in those proceedings.

Compare: 1963 No 22 s 12; 1987 No 85 s 20; 1990 No 59 s 4

Section 29(1): amended, on 5 December 2017, by section 7 of the Films, Videos, and Publications Classification (Interim Restriction Orders) Amendment Act 2017 (2017 No 43).

### **30 Report of findings to be sent to court**

Where the Classification Office has classified any publication referred to it pursuant to section 29(1) or section 41(3), the Classification Office shall forward a report of its findings to the court that referred the publication.

Compare: 1987 No 85 s 25(1)

### **31 When decision on publication referred by court to take effect**

Where,—

- (a) in any civil or criminal proceedings, a publication is referred to the Classification Office pursuant to section 29(1) or section 41(3) by a court; and
- (b) the Classification Office makes a decision with respect to that publication,—

then, subject to section 55(3), that decision shall be of no effect in relation to those proceedings until,—

- (c) if no application for a review of that decision is lodged pursuant to section 47 before the relevant deadline specified in section 48A, that deadline; or
- (d) if an application for a review of that kind is lodged before that deadline, the Board has made a decision in relation to that review.

Compare: 1987 No 85 s 26

Section 31(c): substituted, on 22 February 2005, by section 19(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 31(d): substituted, on 22 February 2005, by section 19(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 31(d): amended, on 1 October 2012, by section 7 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

### *Excisions from and alterations to films*

## **32 Excisions from and alterations to films**

Notwithstanding anything in section 23, if, after examining a film under this Part (other than a film referred to it pursuant to section 29(1) or section 41(3)), the Classification Office is of the opinion that it would classify the film differently according to whether any specified part or parts of the film are excised from or left in the film, it shall, before making a final determination in respect of the classification of the film, follow the procedure prescribed by section 33.

Compare: 1983 No 130 s 15(3); 1987 No 85 s 24(1)

## **33 Procedure for making excisions and alterations**

- (1) In any case to which section 32 applies, the Classification Office shall notify the authorised distributor of the film of—
  - (a) the classification that the Classification Office would give to the film if any specified part or parts of the film were excised or altered to the satisfaction of the Classification Office; and
  - (b) the classification that the Classification Office would give to the film if the specified part or parts of the film were not excised or altered to the satisfaction of the Classification Office.
- (2) If the authorised distributor of the film agrees to each such excision or alteration to the satisfaction of the Classification Office, the Classification Office shall classify that film in accordance with section 23 as if each of the required excisions and alterations were made.
- (3) If the authorised distributor of the film refuses or fails, within 20 working days after the date of the Classification Office's notice, or within such further period as the Classification Office may allow, to agree to any such alteration or excision to the satisfaction of the Classification Office, the Classification Office shall classify the film in accordance with section 23.

- (4) If the authorised distributor of the film agrees to some but not all of the excisions or alterations, the Classification Office shall classify the film in accordance with section 23 as if the excisions and alterations agreed to by the authorised distributor of the film had been made.
- (5) In determining whether to exercise, or in exercising, the Classification Office's powers under this section in respect of any film, the Classification Office may consider the effect that any such excision or alteration may have on the continuity of the film or on its overall effect.

Compare: 1983 No 130 s 16(1)–(7); 1987 No 85 s 24(2)–(6)

### **34 Classification to apply only if excisions and alterations actually made**

Where, pursuant to subsection (2) or subsection (4) of section 33, the Classification Office classifies any film as if certain excisions or alterations had been made to that film,—

- (a) that classification shall apply in respect of that film only if those excisions or alterations are in fact made; and
- (b) the Classification Office shall not direct the labelling body to issue a label in respect of that film unless the Classification Office is satisfied that those excisions or alterations have been made.

Compare: 1987 No 85 s 24(7)

### **35 Provisions to apply to soundtracks**

Sections 32 to 34, so far as they are applicable and with the necessary modifications, shall apply with respect to any soundtrack intended to accompany the viewing of any film being examined.

Compare: 1983 No 130 s 16(11); 1987 No 85 s 24(8)

### *Issue of labels*

### **36 Issue of labels in respect of films**

- (1) Where the Classification Office has examined and classified a film submitted to it pursuant to section 12, the Classification Office shall, subject to subsection (4) and to section 34(b), direct the labelling body to issue a label in respect of that film.
- (1A) If the Classification Office has examined and classified commercial video on-demand content referred to it by a specified CVoD provider pursuant to section 46E(3), the Classification Office must, subject to subsection (4) and to section 34(b), direct the specified CVoD provider to issue a label in respect of the content.
- (2) If the Classification Office has examined and classified a film submitted to it under section 13 or 42, or referred to it under section 29(1) or 41(3), the Classification Office may,—

- (a) in the case of commercial video on-demand content made available, or intended to be made available, by a specified CVoD provider, direct the provider to issue a label in respect of that content; or
  - (b) in any other case, if the Classification Office is satisfied that the film is available for public supply or public exhibition, or is intended to be made available for public supply or public exhibition, direct the labelling body to issue a label in respect of that film.
- (2A) Subsection (2) is subject to subsection (4) and section 34(b).
- (3) Every direction under subsection (1), (1A), or (2) shall specify, in respect of the film,—
- (a) either,—
    - (i) where the Classification Office has classified the film as unrestricted, the rating to be assigned to that film; or
    - (ii) where the Classification Office has classified the film as a restricted publication, the classification of that film; and
  - (b) where appropriate, the description to be assigned to that film; and
  - (c) where, pursuant to section 27, the Classification Office has imposed conditions on the public display of the film, or any film poster relating to the film, or both, those conditions.
- (4) The Classification Office shall not direct the labelling body or a specified CVoD provider to issue a label in respect of any film that the Classification Office has classified as objectionable.
- (5) If, under subsection (2), the Classification Office directs the labelling body or a specified CVoD provider to issue a label in respect of any film, any label previously issued in respect of that film by the labelling body or specified CVoD provider, and any previous direction by the Classification Office to the labelling body or specified CVoD provider to issue a label in respect of that film, must, for the purposes of this Act, be deemed to be cancelled.

Compare: 1987 No 85 s 25(2)–(6)

Section 36(1A): inserted, on 1 August 2021, by section 15(1) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 36(2): replaced, on 1 August 2021, by section 15(2) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 36(2A): inserted, on 1 August 2021, by section 15(2) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 36(3): amended, on 1 August 2021, by section 15(3) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 36(4): amended, on 1 August 2021, by section 15(4) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 36(5): replaced, on 1 August 2021, by section 15(5) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

**36A Issue of labels in respect of other publications that are classified as restricted publications**

- (1) This subsection applies to a publication (other than a film) if the Classification Office has—
  - (a) examined the publication and classified it as a restricted publication; and
  - (b) imposed pursuant to section 27(4)(a) a condition requiring the classification given to the publication to be shown when it is on public display.
- (2) If subsection (1) applies to a publication, the Classification Office must direct the labelling body to issue in respect of the publication a label that specifies the classification given to the publication.
- (3) Where, under subsection (2), or following an order under section 55(1)(da), the Classification Office directs the labelling body to issue a label in respect of a publication, each of the following things is, for the purposes of this Act, deemed to be cancelled:
  - (a) any label previously issued in respect of the publication by the labelling body; and
  - (b) any previous direction by the Classification Office to the labelling body to issue a label in respect of the publication.

Section 36A: inserted, on 21 May 2005, by section 13 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

*Serial publications*

**37 Serial publications**

- (1) Where it has been determined under this Act that no fewer than 3 issues of a serial publication that have been published within a period of not more than 12 months are objectionable or are restricted publications, the Classification Office may, where any issue of that publication is before the Classification Office for the purposes of this Part, make an order (in this section called a **serial publication order**) in respect of that serial publication.
- (2) The Classification Office shall not make a serial publication order the effect of which is that issues of a serial publication will be treated as objectionable, unless the Classification Office is satisfied that, having regard to the issues of that serial publication that have been classified as objectionable, issues of that serial publication that are published while the order is in force would be likely to be classified as objectionable.
- (3) Every serial publication order—
  - (a) shall show whether the issues of the serial publication to which it relates are to be treated as objectionable or as restricted publications and, in the latter case, particulars of the classification; and
  - (b) shall come into force on the day after the date of its entry in the register; and

- (c) shall, unless sooner revoked, remain in force for such period, not exceeding 2 years, as is specified in the order; and
  - (d) shall apply to every issue of that serial publication that is published while the order is in force.
- (4) Where—
- (a) the Classification Office makes a serial publication order under which the issues of a serial publication are to be treated as restricted publications; and
  - (b) the Classification Office has imposed conditions pursuant to section 27 in respect of any 1 or more issues of that serial publication (being issues on the basis of which that serial publication order is made),—
- the Classification Office may include, as part of the terms of that order, such conditions on the public display of the issues to which the order applies, or any advertising posters relating to those issues, or both, as it would be empowered to impose pursuant to that section if those issues were classified as restricted publications.
- (5) While any serial publication order is in force in respect of any serial publication, no person shall do any act or thing in relation to any issue to which the order applies (other than an issue that has been classified by the Classification Office or the Board) that would be an offence against any of sections 123 to 129 if that issue were an objectionable publication or a restricted publication, as the serial publication order may require.
- (6) Where, pursuant to subsection (4), the Classification Office, as part of any serial publication order, includes any condition on the public display of the issues to which the order applies, or any advertising posters relating to those issues, or both, then, while that serial publication order is in force in respect of that serial publication, no person shall do any act or thing in relation to any such issue or, as the case requires, any such advertising poster that would be an offence against section 130 if that issue were a restricted publication and that condition had been imposed pursuant to section 27.
- (7) Nothing in subsection (6) applies in respect of any issue that has been classified by the Classification Office or the Board.
- (8) The Classification Office may, on the application of any of the following persons, revoke or vary the terms of any serial publication order:
- (a) the applicant for the order:
  - (b) the Secretary:
  - (c) the owner, maker, publisher, or authorised distributor of the publication to which the order relates:
  - (d) any other person who satisfies the Chief Censor that the person is detrimentally affected by the existence of the order.

Compare: 1963 No 22 s 15A; 1972 No 136 s 5

*Notice of classification decisions*

Heading: replaced, on 1 October 2012, by section 8 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

**38 Decisions of Classification Office**

- (1) Where the Classification Office makes a decision in respect of any publication submitted to the Classification Office under section 13 or section 42, the Classification Office shall give written notice of its decision to the person who submitted the publication to the Classification Office.
- (2) Every notice under subsection (1) shall specify—
  - (a) the reasons for the decision; and
  - (b) the classification given to the publication; and
  - (c) where, pursuant to section 27, the Classification Office has imposed conditions on the public display of the publication, or any advertising poster or film poster relating to the publication, or both, those conditions; and
  - (d) in the case of a film, the terms of any direction given to the labelling body or a specified CVoD provider under section 36 to issue a label in respect of that film;
  - (e) in the case of a publication (other than a film) that is the subject of a condition imposed pursuant to section 27(4)(a), the terms of any direction given to the labelling body under section 36A(2) to issue a label in respect of that publication.
- (3) Every person shall, on request, and on payment of such fee (if any) as the Classification Office may determine, be entitled to a copy of any notice given pursuant to this section.

Compare: 1963 No 22 s 16(1); 1983 No 130 s 18; 1987 No 85 s 27

Section 38(2)(d): substituted, on 21 May 2005, by section 14 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 38(2)(d): amended, on 1 August 2021, by section 16 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 38(2)(e): added, on 21 May 2005, by section 14 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

*Classification decisions made on or after 1 October 2012*

Heading: inserted, on 1 October 2012, by section 9 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

**39 Register of classification decisions made on or after 1 October 2012**

- (1) The Chief Censor must establish and maintain a register of classification decisions made on or after 1 October 2012.
- (2) The register must be established and maintained in an electronic medium.
- (3) There must be entered in the register for each publication examined by the Classification Office or the Board the following information:

- (a) the decision as to the publication's classification; and
  - (b) the date on which notice of the decision was given, under section 38(1), by the Classification Office or, under section 55(1)(c), by the Board; and
  - (c) the date of entry of the decision in the register; and
  - (d) such other information as may be prescribed in regulations made under section 149.
- (4) The information specified in subsection (3) must be entered in the register,—
- (a) in the case of a publication examined by the Classification Office, within 5 working days after the date on which, under section 38(1), the Classification Office gives notice of its decision:
  - (b) in the case of a publication examined by the Board, within 5 working days after the date on which, under section 55(1)(c), the Board gives notice of its decision.
- (5) The Chief Censor must take all reasonable steps to ensure that the information contained in the register is available at all reasonable times for inspection by the public.
- (6) The Chief Censor must supply to any person a paper or an electronic copy of all or part of the register on request and on payment of a reasonable charge for the production of the copy.

Section 39: replaced, on 1 October 2012, by section 10 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

#### **40 Search criteria**

- (1) The register must be established and maintained so that it may be searched by reference to all or any 1 or more of the following criteria:
- (a) the title of a publication:
  - (b) a specified date or period of entry of decisions in the register:
  - (c) a kind of classification.
- (2) The register may be established and maintained so that it may be searched by reference to any criteria additional to the criteria in subsection (1).

Section 40: replaced, on 1 October 2012, by section 10 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

#### **41 Decisions to be conclusive evidence**

- (1) Subject to subsection (2) and to sections 42, 47, and 58, a subsisting decision of the Classification Office or of the Board in respect of any publication is conclusive evidence in any proceedings that the publication—
- (a) is not objectionable; or
  - (b) is objectionable; or



- (c) is objectionable except in any 1 or more of the following circumstances, as specified in the decision:
  - (i) if the availability of the publication is restricted to persons who have attained a specified age:
  - (ii) if the availability of the publication is restricted to specified persons or classes of persons:
  - (iii) if the publication is used for 1 or more specified purposes.
- (2) Where any person is charged with an offence against this Act or any other enactment, nothing in subsection (1) shall prevent that person from challenging any decision of the Classification Office or the Board in respect of any publication if not less than 1 year has elapsed since that decision was entered in the register in accordance with section 39.
- (3) Where subsection (2) applies in respect of any decision of the Classification Office or the Board, the court shall, at the request of the person so charged, refer the decision to the Classification Office for reconsideration, or to the Board where the decision to be reconsidered is a decision of the Board.

Compare: 1963 No 22 s 18(1), (2); 1987 No 85 s 29

Section 41(2): amended, on 1 October 2012, by section 11 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

#### **42 Reconsideration of publications**

- (1) Any person may, with the leave of the Chief Censor, submit any publication to the Classification Office for reconsideration of the last decision of the Classification Office or the Board in respect of that publication if not less than 3 years have elapsed since that decision was entered in the register in accordance with section 39, and the Classification Office may alter or confirm the previous decision.
- (2) Any owner, maker, publisher, or authorised distributor of a publication may submit that publication to the Classification Office for reconsideration of the last decision of the Classification Office or the Board in respect of that publication if not less than 3 years have elapsed since that decision was entered in the register in accordance with section 39, and the Classification Office may alter or confirm the previous decision.
- (3) Notwithstanding that the period specified in subsection (1) or subsection (2) has not expired, any person may, with the leave of the Chief Censor, submit any publication to the Classification Office for reconsideration of any decision made in respect of it within the period referred to in those subsections if—
  - (a) in the case of a film, the film has been substantially altered since that decision; or
  - (b) the Chief Censor is satisfied that there are special circumstances justifying reconsideration of the decision.

Compare: 1963 No 22 s 20; 1983 No 130 s 19; 1987 No 85 s 30; 1990 No 59 s 6(2)

Section 42(1): amended, on 1 October 2012, by section 12 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 42(2): amended, on 1 October 2012, by section 12 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

### *Classification decisions made before 1 October 2012*

Heading: inserted, on 1 October 2012, by section 13 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

## **42A Register of classification decisions made before 1 October 2012**

- (1) The Chief Censor must—
  - (a) continue to maintain, in any form the Chief Censor considers appropriate, the register that was established under section 39 prior to the repeal and substitution of that section by section 10 of the Films, Videos, and Publications Classification Amendment Act 2012; and
  - (b) continue to make that register open to inspection by the public during ordinary office hours.
- (2) Nothing in this section prevents the Chief Censor combining—
  - (a) the register that continues to be maintained under subsection (1); and
  - (b) the register that is established and maintained under section 39 (as substituted by section 10 of the Films, Videos, and Publications Classification Amendment Act 2012).
- (3) If the Chief Censor combines the registers referred to in subsection (2), the search criteria in section 40 do not apply to the register that continues to be maintained under subsection (1).

Section 42A: inserted, on 1 October 2012, by section 13 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

## **42B Classification Office to publish list of decisions made before 1 October 2012**

- (1) The Classification Office must continue to—
  - (a) keep the lists produced in accordance with section 40 prior to the repeal of that section by section 10 of the Films, Videos, and Publications Classification Amendment Act 2012; and
  - (b) make those lists open to inspection by the public during ordinary office hours; and
  - (c) supply to any person on request, and on payment of a fee (if any), a copy of any such list.
- (2) Any fee charged under subsection (1)(c) must be no more than is reasonably required to recover the cost of supplying the list.

Section 42B: inserted, on 1 October 2012, by section 13 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

**42C Saving in respect of decisions made before 1 October 2012**

The provisions of this Act and the Films, Videos, and Publications Classification Regulations 1994 continue to apply to decisions made by the Classification Office or Board before 1 October 2012 as if the Films, Videos, and Publications Classification Amendment Act 2012 had not been enacted.

Section 42C: inserted, on 1 October 2012, by section 13 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

*Film posters*

**43 Film posters**

Where, in accordance with regulations made under this Act, the Classification Office refuses to approve any film poster used or intended to be used in relation to the public supply or public exhibition of any film submitted to the Classification Office under section 12 or section 13, sections 29(3), 39(2), 41, and 42 shall apply, with all necessary modifications, to the decision of the Classification Office.

*Exemptions*

**44 Applications for exemption**

- (1) Where any publication has been classified under this Act as an objectionable publication or a restricted publication, any person may apply to the Classification Office for an exemption from the provisions of this Act in respect of that publication.
- (2) Every application shall be in the form provided for that purpose by the Chief Censor and shall be accompanied by the prescribed fee (if any).
- (3) On receiving an application under this section in relation to a publication, the Classification Office,—
  - (a) after taking into account the matters referred to in section 3; and
  - (b) if it is satisfied that the publication should be made available to a limited class of persons or to a particular person for educational, professional, scientific, literary, artistic, or technical purposes,—may exempt that class of persons or that person from the provisions of this Act in respect of that publication for such period as the Classification Office thinks fit.
- (4) For the purposes of making a decision on any application under this section, section 21, so far as applicable and with all necessary modifications, shall apply as if the Classification Office were examining the publication to which the application relates for the purposes of classification.
- (5) The Classification Office shall not decline an application under this section without giving the applicant—

- (a) a copy of any information on which the Classification Office relies in proposing to decline the application; and
  - (b) a reasonable opportunity to make written submissions to the Classification Office in relation to that information.
- (6) An exemption under this section may be granted absolutely, or subject to such conditions as may be specified in any regulations made under this Act or as may be imposed by the Classification Office.

Compare: 1963 No 22 s 31(1); 1987 No 85 s 64(1)

#### **45 Notification of decision**

- (1) Where the Classification Office makes a decision in respect of any application made under section 44, the Classification Office shall give written notice of its decision to the applicant.
- (2) Every notice under subsection (1) shall specify—
- (a) the reasons for the decision; and
  - (b) if the exemption has been granted, the terms of the exemption, including—
    - (i) the period for which the exemption is to continue; and
    - (ii) the conditions (if any) to which the exemption is subject.

#### **46 Burden of proof**

In any prosecution for an offence against this Act, the burden of proving that the defendant was exempted under section 44 and was acting in accordance with the terms of the exemption shall be on the defendant.

Compare: 1963 No 22 s 31(2); 1987 No 85 s 64(2)

### **Part 3A**

#### **Labelling requirements for specified CVoD providers' commercial video on-demand content**

Part 3A: inserted, on 1 August 2021, by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **46A Purpose of Part**

The purpose of this Part is to reduce the risk of psychological and physical harm to people who view commercial video on-demand content, particularly vulnerable people and children, by enabling informed viewing decisions through requiring consistent and informative content labelling by specified CVoD providers.

Section 46A: inserted, on 1 August 2021, by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **46B Extraterritorial application to specified CVoD providers**

This Act, and any regulations made under it, apply in respect of commercial video on-demand content that is made available in New Zealand by a specified CVoD provider, regardless of whether the provider is resident or incorporated in New Zealand or outside New Zealand.

Section 46B: inserted, on 1 August 2021, by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **46C Duty to label commercial video on-demand content**

- (1) Before making commercial video on-demand content available to persons in New Zealand, a specified CVoD provider must ensure that the content has been labelled in accordance with this Act.
- (2) The label must be displayed in the prescribed manner and must include any classification or rating assigned to the content and any description assigned to the content.
- (3) This section is subject to section 8.

Section 46C: inserted, on 1 August 2021, by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **46D Content previously labelled or classified**

- (1) If a specified CVoD provider intends to make commercial video on-demand content available to persons in New Zealand and a label for that content has previously been issued under this Act, the provider must issue a label that contains the same classification or rating and the same description (if any) that was contained in the label that was previously issued.
- (2) If a specified CVoD provider intends to make commercial video on-demand content available to persons in New Zealand and that content has previously been classified under this Act, but no label has been issued for that content, the provider must refer that content to the Classification Office for a direction under section 36.
- (3) Subsections (1) and (2) apply irrespective of whether the content is in the same technical form or a different technical form.

Section 46D: inserted, on 1 August 2021, by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **46E Content not previously labelled or classified**

- (1) If a specified CVoD provider intends to make available to persons in New Zealand commercial video on-demand content to which a label has not been assigned under this Act, the provider must label the commercial video on-demand content by—
  - (a) using an approved self-rating system; or
  - (b) applying to the labelling body under section 9(1) for the issue of a label in respect of that content.

- (2) Unless the approved self-rating system used by the provider identifies the commercial video on-demand content as potentially being objectionable, the provider must apply the label generated by the approved self-rating system.
- (3) If the approved self-rating system used by the provider identifies the commercial video on-demand content as potentially being objectionable, the provider must refer that content to the Classification Office for classification.

Section 46E: inserted, on 1 August 2021, by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **46F How ratings and descriptions must be determined**

- (1) The rating and description assigned to commercial video on-demand content by a specified CVoD provider using an approved self-rating system must be consistent with the purpose of this Part, taking into account all of the following factors:
  - (a) the dominant effect of the content as a whole:
  - (b) the persons, classes of persons, or age groups of the persons to whom the content is intended or is likely to be made accessible:
  - (c) the extent to which, and the manner in which, the content deals with sex, horror, crime, terrorism, cruelty, violence, torture, sexual violence, sexualisation of children, self-harm, or offensive language or behaviour:
  - (d) whether and how the content—
    - (i) degrades or dehumanises or demeans any person:
    - (ii) represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic of members of that class, being a characteristic that is a prohibited ground of discrimination specified in section 21(1) of the Human Rights Act 1993:
  - (e) any other aspect of the content which is likely to be of concern to parents and young people or to cause harm to persons who view that content:
  - (f) any literary, artistic, social, cultural, educational, or scientific importance, merit, or value of the content:
  - (g) any other factors prescribed in regulations.
- (2) The rating must indicate whether the content is—
  - (a) suitable for all audiences; or
  - (b) suitable for all audiences with parental guidance for children; or
  - (c) suitable for mature audiences; or
  - (d) unsuitable for audiences under a specified age.
- (3) The description, if applicable, must—
  - (a) be in the prescribed form; and

- (b) describe those aspects of the content that are likely to be of concern to parents and young people or to cause harm to persons who view it.

Section 46F: inserted, on 1 August 2021, by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **46G Approval of providers' self-rating systems**

- (1) A specified CVoD provider may apply to the Chief Censor for approval of a system to be used by the provider to rate and label the provider's commercial video on-demand content.
- (2) Every application must contain the prescribed information and be accompanied by the prescribed fee (if any).
- (3) The Chief Censor may approve the self-rating system for use by the provider if the Chief Censor is satisfied that use of the system will enable the provider to meet the requirements of section 46F.
- (4) The Chief Censor's approval may be subject to any terms and conditions that the Chief Censor considers are necessary for the purposes of subsection (3).

Section 46G: inserted, on 1 August 2021, by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **46H Chief Censor must annually review approved self-rating systems**

- (1) The Chief Censor must annually review each approved self-rating system used by a specified CVoD provider.
- (2) A specified CVoD provider must pay the prescribed fee (if any) for the annual review.

Section 46H: inserted, on 1 August 2021, by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **46I Suspension and cancellation of approvals**

- (1) The Chief Censor may, at any time, give notice to a specified CVoD provider that the approval of the self-rating system used by the provider is suspended if the Chief Censor considers that the provider is not using the self-rating system in accordance with any terms and conditions of the approval.
- (2) A notice under subsection (1) must specify the reasons for the suspension.
- (3) The Chief Censor may cancel the approval if—
  - (a) the Chief Censor has notified the specified CVoD provider of a suspension in accordance with subsections (1) and (2) and given the provider a reasonable opportunity to address the Chief Censor's concerns; and
  - (b) the provider has failed to address those concerns.
- (4) If an approval is suspended under this section, during the period of suspension, the system to which the approval relates is not an approved self-rating system.
- (5) If an approval is cancelled under this section, the system to which the approval relates is not an approved self-rating system from the date of the cancellation.

Section 46I: inserted, on 1 August 2021, by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **46J Complaints process**

- (1) Any person may complain to the Chief Censor about the rating or description assigned by a specified CVoD provider to commercial video on-demand content.
- (2) After receiving a complaint, the Chief Censor may—
  - (a) refer the complaint to the provider, along with any comment or recommendation the Chief Censor considers appropriate, and require the provider to consider the complaint and respond to the complainant; or
  - (b) classify the content under section 13(3); or
  - (c) decline to take further action, if the Chief Censor considers that the content has been correctly labelled.
- (3) After making a decision in accordance with subsection (2), the Chief Censor must advise the person who made the complaint of the decision and the reasons for the decision.

Section 46J: inserted, on 1 August 2021, by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

## **Part 4 Review of classification decisions**

### *Applications for review*

#### **47 Right of review**

- (1) Any of the persons specified in subsection (2) who are dissatisfied with any decision of the Classification Office with respect to the classification of any publication shall be entitled, on application, to have the publication reviewed by the Board.
- (2) The following persons may seek a review under subsection (1):
  - (a) where the publication has been submitted to the Classification Office pursuant to section 13 or section 42, the person who submitted that publication;
  - (b) where the publication has been submitted to the Classification Office by the labelling body pursuant to section 12, the labelling body;
  - (c) where the publication has been referred to the Classification Office by a court pursuant to section 29(1) or section 41(3), any party to the proceeding in respect of which that referral was made;
  - (d) in all cases, the owner, maker, publisher, or authorised distributor of the publication:



- (e) with the leave of the Secretary, any other person.
- (3) Every application for the leave of the Secretary under subsection (2)(e) must—
  - (a) be made in the prescribed manner; and
  - (b) be lodged with the Secretary before the deadline specified in subsection (3A).
- (3A) The deadline referred to in subsection (3)(b) is the end of ordinary office hours on the 20th working day after the day on which the relevant decision of the Classification Office is entered in the register in accordance with section 39.
- (4) For the purposes of this section, a decision of the Classification Office under section 27 to impose any condition on the public display of any restricted publication, or any advertising poster or film poster relating to a restricted publication, or both, or a refusal or failure to impose any such condition, or any particular such condition, under that section, shall be deemed to be a decision with respect to the classification of that publication.

Compare: 1983 No 130 s 30; 1987 No 85 s 36

Section 47(3): substituted, on 22 February 2005, by section 17(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 47(3A): inserted, on 22 February 2005, by section 17(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 47(3A): amended, on 1 October 2012, by section 14 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

#### **48 Applications for review**

- (1) Every application for a review under section 47 shall—
  - (a) be in the prescribed form; and
  - (b) be lodged with the Secretary before the relevant deadline specified in section 48A; and
  - (c) be accompanied by the prescribed fee (if any).
- (2) On receiving under this section an application for review the Secretary must, if satisfied that it complies with subsection (1), forward it forthwith to the President of the Board.

Compare: 1983 No 130 s 31; 1987 No 85 s 37; 1990 No 58 s 8(2)(a); 1990 No 59 s 6(2)

Section 48(1)(b): substituted, on 22 February 2005, by section 18(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 48(2): substituted, on 22 February 2005, by section 18(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

#### **48A Deadline for lodging applications for review**

The deadline referred to in section 48(1)(b) is,—

- (a) if the person concerned requires the leave of the Secretary under section 47(2)(e) in order to seek the review, the end of ordinary office hours on whichever is the later of the following:

- (i) the fifth working day after the day on which that leave is granted by the Secretary; or
  - (ii) the 30th working day after the day on which the relevant decision of the Classification Office is entered in the register in accordance with section 39; and
- (b) in every other case, the end of ordinary office hours on the 30th working day after the day on which the relevant decision of the Classification Office is entered in the register in accordance with section 39.

Section 48A: inserted, on 22 February 2005, by section 19(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 48A(a)(ii): amended, on 1 October 2012, by section 15 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 48A(b): amended, on 1 October 2012, by section 15 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

#### *Interim restrictions on review*

#### **49 Interim restriction orders on review**

- (1) A person who is entitled, under section 53(2), to make written submissions to the Board in relation to a publication submitted for review under section 47 may, at any time before the review is completed, apply to the President of the Board for an interim restriction order in respect of the publication.
- (2) The President must, as soon as practicable,—
  - (a) grant the application, if he or she is satisfied that it is in the public interest to do so; or
  - (b) decline the application.
- (3) If the President grants the application, he or she must make an interim restriction order in respect of the publication that—
  - (a) prohibits the doing of any act or thing in relation to the publication that, if the publication were an objectionable publication, would be an offence against any of the following:
    - (i) section 123(1)(c), (d), or (e):
    - (ii) section 127:
    - (iii) section 129; or
  - (b) restricts the availability of the publication to—
    - (i) persons who have attained the age of 18 years or a specified younger age; or
    - (ii) specified persons or classes of persons; or
  - (c) restricts the use of the publication to 1 or more specified purposes (which may be made in conjunction with an order made under paragraph (b)).

- (4) When determining whether to make an order under subsection (3)(b) or (c), the President need not take into account the matters referred to in sections 3(4)(a) to (f), 3A, and 3B that apply when determining whether a publication is to be classified as a restricted publication.

Section 49: replaced, on 5 December 2017, by section 4 of the Films, Videos, and Publications Classification (Interim Restriction Orders) Amendment Act 2017 (2017 No 43).

#### **50 Notification of interim restriction order**

- (1) Every interim restriction order shall be published in the *Gazette*.
- (2) As soon as reasonably practicable after an interim restriction order is made, the person on whose application the order is made shall—
- (a) advertise the making of the order, in such manner as the President of the Board shall direct; and
  - (b) serve notice of the making of the order on such persons or classes of persons as the President of the Board shall direct.
- (3) Every person on whom notice of the making of an interim restriction order is served shall, if that person has furnished the publication to which the order relates to any other person for distribution, exhibition, or supply, give, where practicable and as soon as reasonably practicable, a notice of the making of the order to that other person.

Compare: 1963 No 22 ss 14A(6), (7), 14B(4); 1972 No 136 s 3; 1977 No 79 s 3

#### **51 Duration and revocation of interim restriction order**

- (1) Every interim restriction order shall come into force on the day on which it is made and, unless sooner revoked, shall remain in force until the review of the publication to which the order relates is completed by the Board.
- (2) The President of the Board may, on the application of any of the following persons, or on the President's own motion, revoke an interim restriction order:
- (a) the applicant for the order;
  - (b) the owner, maker, publisher, or authorised distributor of the publication to which the order relates;
  - (c) any other person who satisfies the President of the Board that the person is detrimentally affected by the existence of the order.
- (3) Every order under this section that revokes an interim restriction order shall be published in the *Gazette*, and shall be advertised in such manner, and notified to such persons, as the President of the Board shall direct.

Compare: 1963 No 22 s 14B(3); 1977 No 79 s 3

#### *Conduct of reviews*

#### **52 Conduct of reviews**

- (1) Every review under this Part shall be conducted as soon as practicable.

- (2) Every review under this Part shall be by way of re-examination of the publication by the Board without regard to the decision of the Classification Office.
- (3) The Board shall examine any publication submitted to it under section 47 to determine the classification of the publication.
- (4) In determining the classification of any publication, the Board shall take into account the matters referred to in sections 3 to 3D.

Compare: 1983 No 130 s 33(1)–(3); 1987 No 85 s 38(1)–(3)

Section 52(4): amended, on 20 September 2007, by section 4 of the Films, Videos, and Publications Classification Amendment Act 2007 (2007 No 58).

### **53 Procedure**

- (1) Except as provided in subsections (2) to (4) or in section 54, neither the applicant for review nor any other person shall have the right to appear before, or to be heard by, or to make submissions to, the Board in respect of any review.
- (2) The following persons shall be entitled to make written submissions to the Board in relation to a publication submitted for review:
  - (a) the applicant for review:
  - (b) if the applicant for review is a party to the proceeding referred to in section 47(2)(c), every other party to that proceeding:
  - (c) any other person who satisfies the Board that the person is likely to be affected by the Board's decision.
- (3) The Board may, on the application of any person who is entitled to make written submissions to the Board in respect of the review, or on its own motion, hold a hearing for the purposes of hearing oral submissions in respect of any review.
- (4) At any hearing held by the Board under subsection (3), the following persons shall be entitled to appear and be heard, and may, with the leave of the Board, be represented by counsel or some other duly authorised person:
  - (a) any person who is entitled to make written submissions to the Board in respect of the review:
  - (b) any person who is invited, pursuant to any of subsections (2) to (4) of section 54, to make submissions to the Board in respect of the review.

Compare: 1983 No 130 s 33(4); 1987 No 85 s 38(4)

### **54 Consultation**

- (1) For the purposes of any review under this Part, the Board shall have the same power to consult any person (including the Classification Office), invite written submissions, obtain information, and make inquiries as is conferred on the Classification Office by section 21.
- (2) If the Board consults the person submitting the publication for review, or receives written submissions from that person or any other person in accord-

ance with section 53(2), it shall notify the Classification Office of that fact, and invite the Classification Office to make submissions to the Board in relation to that publication.

- (3) If the Board consults the Classification Office otherwise than on purely technical matters, it shall notify the person submitting the publication for review, and, if that person is a party to the proceeding referred to in section 47(2)(c), every other party to that proceeding, that it has done so, and invite that person and every other such party to make submissions to the Board in relation to that publication.
- (4) If the Board consults any person who is a party to the proceeding referred to in section 47(2)(c), it shall notify the Classification Office, and every other person who is a party to that proceeding, that it has done so, and invite the Classification Office and those persons to make submissions to the Board in relation to that publication.

Compare: 1983 No 130 s 33(5); 1987 No 85 s 38(5)–(7)

## **55 Decision of Board**

- (1) After examining any publication submitted to it for review, the Board shall—
  - (a) classify the publication in accordance with section 23(2); and
  - (b) where the Board has classified the publication as a restricted publication, determine in accordance with section 27 whether or not conditions should be imposed in respect of the public display of that publication, or any advertising poster or, as the case requires, any film poster relating to the publication, or both, and if so, what conditions; and
  - (c) give written notice of its decision, and of the reasons for its decision, to—
    - (i) the applicant for review; and
    - (ii) the Classification Office; and
    - (iii) if the review is in respect of a publication referred to the Classification Office by a court pursuant to section 29 or section 41(3), to that court; and
  - (d) where the review is in respect of a film submitted to the Classification Office pursuant to section 12, order the Classification Office to direct the labelling body to issue a label in respect of that film pursuant to section 36; and
  - (da) where the review is in respect of a publication (other than a film) and the Board imposes a condition pursuant to section 27(4)(a), order the Classification Office to direct the labelling body, in accordance with section 36A(2), to issue a label in respect of the publication; and
  - (e) direct the Classification Office to enter the Board's decision in the register.

- (2) Notwithstanding anything in subsection (1), on any review of a publication, the Board shall have the same powers as are conferred on the Classification Office by this Act (other than the powers conferred by section 37).
- (2A) Before giving written notice of its decision under subsection (1)(c), the Board may inform the persons specified in that paragraph of—
- (a) the classification given to the publication under subsection (1)(a); and
  - (b) any conditions imposed under subsection (1)(b).
- (3) Where the Board makes any decision in relation to any publication submitted to it under section 47, the decision of the Classification Office in relation to that publication (including any conditions imposed under section 27), and the classification given to that publication by the Classification Office, shall, for the purposes of this Act, be deemed to be cancelled.

Compare: 1983 No 130 s 33(6), (7); 1987 No 85 s 38(8)–(10); 1990 No 58 s 9; 1990 No 59 s 7

Section 55(1)(da): inserted, on 21 May 2005, by section 20 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 55(1)(e): replaced, on 1 October 2012, by section 16(1) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 55(2A): inserted, on 1 October 2012, by section 16(2) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 55(3): amended, on 1 October 2012, by section 16(3) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

## **56 Reconsideration of decisions referred under section 41(3)**

Where, under section 41(3), a court refers to the Board for reconsideration any decision of the Board in respect of any publication, the Board shall carry out that reconsideration as if it were a review of that publication under section 52, and the provisions of sections 53 to 55, so far as they are applicable and with the necessary modifications, shall apply with respect to any such reconsideration.

Compare: 1987 No 85 s 39

## **57 Board may state case for High Court**

The Board may, on its own motion, state a case for the opinion of the High Court on any question of law arising in any matter before the Board.

Compare: 1983 No 130 s 36; 1987 No 85 s 40; 1991 No 60 s 3(4)

## Part 5 Appeals

### *Appeal to High Court*

#### **58 Appeal against decision of Board on question of law**

- (1) Where the Board makes any decision in respect of any publication referred to it under section 41(3), or submitted to it under section 47, any of the persons specified in subsection (2) who are dissatisfied with that decision as being erroneous in point of law may appeal to the High Court on that question of law.
- (2) The following persons may appeal under subsection (1):
  - (a) the person who sought the review, by the Board, of the publication in respect of which the decision was made:
  - (b) where the decision was made in respect of any publication referred to the Board under section 41(3), any party to the proceeding in respect of which that referral was made:
  - (c) where the review by the Board was sought pursuant to paragraph (c) of section 47(2), any party to the proceeding referred to in that paragraph:
  - (d) the owner, maker, publisher, or authorised distributor of the publication in respect of which the decision was made.
- (3) Subject to this Part, every appeal under this section shall be dealt with in accordance with rules of court.

Compare: 1983 No 130 s 37; 1987 No 85 s 41; 1990 No 58 s 8(2)(b); 1991 No 60 s 3(4)

Section 58(1): amended, on 1 October 2012, by section 17 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 58(2)(a): amended, on 1 October 2012, by section 17 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 58(2)(b): amended, on 1 October 2012, by section 17 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 58(2)(d): amended, on 1 October 2012, by section 17 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

#### **59 Notice of appeal**

- (1) Every appeal under section 58 shall be instituted by the appellant lodging a notice of appeal, within 20 working days after the date the decision is given, with—
  - (a) the Registrar of the High Court at Wellington; and
  - (b) the Secretary.
- (1A) For the purpose of subsection (1), a decision is given when the Board gives written notice, under section 55(1)(c), of its decision and of the reasons for its decision.

- (2) Subject to section 60, either before or immediately after the lodging of the notice of appeal the appellant shall serve a copy of the notice of appeal, either personally or by post, on every other person who would have been entitled to appeal under section 58 against the decision in respect of which the appeal has been brought.
- (3) Service under subsection (2), if by post, shall be by registered letter and shall, for the purposes of this section, be deemed in the absence of evidence to the contrary to be effected at the time when the letter would be delivered in the ordinary course of post.
- (4) Every notice of appeal shall specify—
  - (a) the decision or the part of the decision appealed from; and
  - (b) the error of law alleged by the appellant; and
  - (c) the question of law to be resolved; and
  - (d) the grounds of the appeal, which grounds shall be specified with such reasonable particularity as to give full advice to both the court and the other parties of the issues involved.
- (5) The Secretary shall, as soon as practicable after receiving a notice of appeal, send a copy of the whole of the decision appealed against to the Registrar of the High Court at Wellington.

Compare: 1983 No 130 s 38; 1987 No 85 s 42; 1990 No 58 s 8(3)

Section 59(1): amended, on 1 October 2012, by section 18(1) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 59(1A): inserted, on 1 October 2012, by section 18(2) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 59(2): amended, on 1 October 2012, by section 18(3) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 59(4)(a): amended, on 1 October 2012, by section 18(3) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 59(5): amended, on 1 October 2012, by section 18(3) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

## **60 Court may dispense with service**

Where any person cannot be served with a notice of appeal in accordance with section 59(2), the High Court or a Judge of that court may, on such terms and conditions as the court or Judge thinks fit, dispense with service on that person.

Compare: 1989 No 24 s 155

## **61 Right of other parties to appear and be heard on appeal**

- (1) If any of the persons on whom a copy of the notice of appeal is required to be served under section 59(2) wishes to appear and be heard on the hearing of the appeal, that person shall, within 10 working days after the date of the service of that copy on that person, lodge with the Registrar of the High Court at Wellington a notice of that person's intention to appear and be heard.



- (2) If any such person gives a notice of intention to appear and be heard, that party and the appellant shall be parties to the appeal and shall be entitled—
- (a) to be served with every document that, after the giving of the notice, is filed or lodged with the Registrar relating to the appeal; and
  - (b) to receive a notice of the date set down for the hearing of the appeal.

Compare: 1983 No 130 s 39; 1987 No 85 s 43; 1990 No 58 s 8(4)

## **62 Appeal in respect of additional points of law**

- (1) Where any party to an appeal under section 58 other than the appellant wishes to contend at the hearing of the appeal that the decision appealed from is erroneous on a point of law other than those set out in the notice of appeal, that party shall, within 20 working days after the date of the service on that party of a copy of the notice of appeal, lodge a notice to that effect with the Registrar of the High Court at Wellington.
- (2) The provisions of section 58, subsections (2) to (4) of section 59, section 60, and sections 63 to 66 shall apply, with any necessary modifications, to any notice lodged under this section as if it were a notice of appeal.

Compare: 1983 No 130 s 42; 1987 No 85 s 46

Section 62(1): amended, on 1 October 2012, by section 19 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

## **63 Orders relating to determination of appeals**

- (1) Subject to subsections (2) and (3), the High Court may, on its own motion or on the application of any party to the appeal, make all or any of the following orders:
- (a) an order directing the Secretary to lodge with the Registrar of the High Court at Wellington any document or other written material or any exhibit in the possession or custody of the Secretary;
  - (b) an order directing the Secretary to lodge with the Registrar a report recording, in respect of any matter or issue that the court may specify, any of the findings of fact of the Board that are not set out, or fully set out, in its decision;
  - (c) an order directing the Secretary to lodge with the Registrar a report setting out, in respect of any matter or issue that the court may specify, any reasons or considerations of the Board to which the Board had regard but that are not set out in its decision.
- (2) An application under subsection (1) shall be made,—
- (a) in the case of the appellant, within 20 working days after the date of the lodging of the notice of appeal; or
  - (b) in the case of any other party to the appeal, within 20 working days after the date of the service on that party of a copy of the notice of appeal.

- (3) The High Court may make an order under subsection (1) only if it is satisfied that a proper determination of the point of law in issue so requires; and the order may be made subject to such conditions as the High Court thinks fit.

Compare: 1983 No 130 s 40; 1987 No 85 s 44

Section 63(1)(b): amended, on 1 October 2012, by section 20 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 63(1)(c): amended, on 1 October 2012, by section 20 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

#### **64 Dismissal of appeal**

The High Court may dismiss any appeal under section 58—

- (a) if the appellant does not appear at the time appointed for the hearing of the appeal; or
- (b) if the appellant does not prosecute the appeal with all due diligence and any other party applies to the court for the dismissal of the appeal.

Compare: 1983 No 120 s 41; 1987 No 85 s 45

#### **65 Extension of time**

The High Court or a Judge of the High Court may, in its or that Judge's discretion, on the application of the appellant or intending appellant, or any other party, extend any time prescribed or allowed under any of the provisions of sections 59 to 64 for the lodging of any notice, application, or other document.

Compare: 1983 No 130 s 43; 1987 No 85 s 47

#### **66 Date of hearing**

When any party to the appeal notifies the Registrar of the High Court at Wellington—

- (a) that the notice of appeal has been served in accordance with section 59(2) (or, where service has been dispensed with under section 60, that any terms and conditions on which that dispensation was granted have been complied with); and
- (b) either—
  - (i) that no application has been lodged under section 63 and that no order has been made under that section; or
  - (ii) that any application lodged under section 63 has been heard and that any order under that section has been complied with,—

the appeal shall be, in all respects, ready for hearing and the Registrar shall arrange a date for the hearing as soon as is practicable.

Compare: 1983 No 130 s 44; 1987 No 85 s 48

*Interim restrictions on appeal*

**67 Interim restriction orders on appeal**

- (1) A party to an appeal under section 58 may, at any time before the appeal is determined, apply on notice to the High Court or a Judge of that court for an interim restriction order in respect of the publication that is the subject of the appeal.
- (2) The High Court or Judge must, as soon as practicable,—
  - (a) grant the application, if the High Court or Judge is satisfied that it is in the public interest to do so; or
  - (b) decline the application.
- (3) If the High Court or Judge grants the application, the High Court or Judge must make an interim restriction order in respect of the publication that—
  - (a) prohibits the doing of any act or thing in relation to the publication that, if the publication were an objectionable publication, would be an offence against any of the following:
    - (i) section 123(1)(c), (d), or (e):
    - (ii) section 127:
    - (iii) section 129; or
  - (b) restricts the availability of the publication to—
    - (i) persons who have attained the age of 18 years or a specified younger age; or
    - (ii) specified persons or classes of persons; or
  - (c) restricts the use of the publication to 1 or more specified purposes (which may be made in conjunction with an order made under paragraph (b)).
- (4) When determining whether to make an order under subsection (3)(b) or (c), the High Court or Judge need not take into account the matters referred to in sections 3(4)(a) to (f), 3A, and 3B that apply in determining whether a publication is to be classified as a restricted publication.

Section 67: replaced, on 5 December 2017, by section 5 of the Films, Videos, and Publications Classification (Interim Restriction Orders) Amendment Act 2017 (2017 No 43).

**68 Notification of interim restriction order**

- (1) Every interim restriction order shall be published in the *Gazette*.
- (2) As soon as reasonably practicable after an interim restriction order is made, the person on whose application the order is made shall—
  - (a) advertise the making of the order, in such manner as the High Court or a Judge of that court shall direct; and

- (b) serve notice of the making of that order on such persons or classes of persons as the court or Judge shall direct.
- (3) Every person on whom notice of the making of an interim restriction order is served shall, if that person has furnished the publication to which the order relates to any other person for distribution, exhibition, or supply, give, where practicable and as soon as reasonably practicable, a notice of the making of the order to that other person.

Compare: 1963 No 22 ss 14A(6), (7), 14B(4); 1972 No 136 s 3; 1977 No 79 s 3; 1987 No 85 s 49(4), (5)

### **69 Duration and revocation of interim restriction order**

- (1) Every interim restriction order shall come into force on the day on which it is made and, unless sooner revoked, shall remain in force until the appeal is finally determined by the High Court.
- (2) The High Court or a Judge of that court may, on the application on notice of any of the following persons, or on the court's or the Judge's own motion, revoke an interim restriction order:
  - (a) the applicant for the order:
  - (b) any other party to the appeal:
  - (c) the owner, maker, publisher, or authorised distributor of the publication to which the order relates:
  - (d) any other person who satisfies the High Court or a Judge of that court that the person is detrimentally affected by the existence of the order.
- (3) Every order under this section that revokes an interim restriction order shall be published in the *Gazette*, and shall be advertised in such manner, and notified to such persons, as the court or a Judge directs.

Compare: 1963 No 22 s 14B(3); 1977 No 79 s 3; 1987 No 85 s 49(6)

### *Appeal to Court of Appeal*

### **70 Appeal against decision of High Court**

- (1) If any party to the proceedings before the High Court under this Part is dissatisfied with any final determination of the court in respect of the appeal as being erroneous in point of law, that party may appeal to the Court of Appeal for the opinion of that court on that question of law.
- (2) Every such appeal shall be heard and determined in accordance with rules of court.

Compare: 1983 No 130 s 46; 1987 No 85 s 50

## Part 6 Bodies

### *Labelling body*

#### **71 Functions of labelling body**

The functions of the labelling body are as follows:

- (a) in accordance with regulations made under this Act,—
  - (i) to assign a rating to any film referred to it for the issue of a label:
  - (ii) where appropriate, to assign a description to any such film to indicate whether it contains antisocial behaviour, cruelty, violence, crime, horror, sex, or offensive language or behaviour:
- (b) to issue in respect of any such film a label that contains the rating and description (if any) assigned to that film:
- (ba) to issue, on an application under section 9(1) in respect of the film and in accordance with regulations made under this Act, but without a direction of the Classification Office under section 36, labels (containing the classification of, and any description assigned to, the item) in respect of a film—
  - (i) an item on which has been classified under this Act as a restricted publication; and
  - (ii) all other material on which is material to which the labelling body would, in accordance with regulations made under this Act, be permitted to assign a rating:
- (bb) to issue, at the direction of the Classification Office under section 36 or section 36A(2), and in accordance with regulations made under this Act, labels in respect of the following publications:
  - (i) a film to which section 36(1) or (2) applies:
  - (ii) a publication (other than a film) that is the subject of a condition imposed pursuant to section 27(4)(a):
- (c) to examine, in accordance with regulations made under this Act, any film poster used or intended to be used in relation to the public supply or public exhibition of any film.

Compare: 1987 No 85 s 11

Section 71(ba): inserted, on 21 May 2005, by section 21 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 71(bb): inserted, on 21 May 2005, by section 21 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

**72 Approval of labelling body**

- (1) Subject to this section, the Minister may from time to time, on application made to the Minister in accordance with section 73, approve any body or organisation to act as the labelling body for the purposes of this Act.
- (2) An approval under this section shall—
  - (a) be made by notice published in the *Gazette*, and shall take effect from the date of such notice or such later date as may be specified in the notice; and
  - (b) continue in force until it is revoked under section 75.
- (3) The Minister may grant an approval under this section subject to such conditions as the Minister thinks fit.
- (4) The Minister shall not approve a body or organisation under this section unless the Minister is satisfied that—
  - (a) the body or organisation is representative of the following persons:
    - (i) persons engaged in the distribution or public supply of films in New Zealand; and
    - (ii) persons engaged in the production of films in New Zealand; and
    - (iii) persons engaged in the public exhibition of films in New Zealand; and
  - (b) the body or organisation is capable of implementing a system to assign a rating and description to any film referred to it for the issue of a label; and
  - (c) the body or organisation will take all reasonable steps to ensure that notice of the rating and description assigned to any such film is disseminated to persons engaged in the production, distribution, public exhibition, or public supply of films.
- (5) The Minister shall not decline an application for approval under this section without first giving the applicant—
  - (a) a copy of any information on which the Minister relies in proposing to decline the application; and
  - (b) a reasonable opportunity to make written submissions to the Minister in relation to that information.

Compare: 1987 No 85 s 7

**73 Application for approval as labelling body**

- (1) An application for approval as the labelling body under section 72 shall specify—
  - (a) the constitution and rules of the body or organisation seeking approval; and

- (b) the procedure by which that body or organisation proposes to carry out the functions of the labelling body under this Act.
- (2) In addition to the particulars required under subsection (1), the Minister may, for the purposes of deciding whether or not to grant an approval under section 72, require any body or organisation that applies for an approval to furnish to the Minister such further information as the Minister requires relating to any of the matters specified in paragraphs (a) to (c) of section 72(4).

Compare: 1987 No 85 s 9

#### **74 Community representatives**

- (1) For the purpose of ensuring that the interests of the general public are taken into account in the labelling of films under this Act, the Minister shall, by notice in the *Gazette*, appoint 1 or more persons to participate in the carrying out, by the labelling body, of its functions under this Act.
- (2) The Minister must make an appointment under subsection (1)—
  - (a) on approving any body or organisation as the labelling body under section 72; and
  - (b) whenever in the Minister's opinion an appointment is necessary to achieve the purpose stated in subsection (1).
- (3) An appointment under subsection (1) may be made only on the recommendation of the Minister of Consumer Affairs, which recommendation may be made only after consultation by that Minister with the Minister of Women's Affairs.
- (4) A person appointed under subsection (1) shall continue to hold office under that subsection until that person dies, or resigns by notice in writing to the Minister, or that person's appointment is revoked under subsection (5), or the approval of the body or organisation as the labelling body is revoked under section 75.
- (5) The Minister may at any time, by notice in the *Gazette*, revoke the appointment of any person under subsection (1), and that person shall, on the day of the publication of the notice, cease to hold office under that subsection.
- (6) Every appointment made under subsection (1) shall, as long as that appointment continues, be reviewed by the Minister at intervals of not more than 3 years.
- (7) The powers of the labelling body under this Act shall not be affected by the fact that, at any particular time, no person holds office under subsection (1).

Compare: 1987 No 85 s 10

Section 74(2): substituted, on 3 June 1998, by section 2 of the Films, Videos, and Publications Classification Amendment Act 1998 (1998 No 45).

**75 Revocation of approval**

- (1) Subject to subsection (2), the Minister may at any time, by notice in writing published in the *Gazette*, revoke an approval given under section 72 if the Minister is satisfied that the labelling body—
  - (a) no longer meets all of the requirements for approval specified in paragraphs (a) to (c) of section 72(4); or
  - (b) has failed to comply with any condition imposed by the Minister on that body's approval; or
  - (c) has failed to comply with any obligation imposed on the labelling body by or under this Act.
- (2) The Minister shall not revoke any approval pursuant to subsection (1) unless the labelling body has first been given an opportunity to be heard.

Compare: 1987 No 85 s 8

*Office of Film and Literature Classification***76 Office of Film and Literature Classification**

- (1) There shall be an office called the Office of Film and Literature Classification.
- (2) The Office of Film and Literature Classification is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies except to the extent that this Act expressly provides otherwise.

Section 76(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 76(3): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**77 Functions of Classification Office**

- (1) The functions of the Classification Office are as follows:
  - (a) to determine the classification of any publication submitted to it under this Act:
  - (aa) to support and facilitate the development by specified CVoD providers of approved self-rating systems:
  - (ab) to provide and maintain a database of films (*see* section 11A):
  - (ac) to support the Chief Censor to approve self-rating systems developed by specified CVoD providers for their use to label commercial video on-demand content (*see* section 46G) and to monitor the operation of, and results of the use of, those approved self-rating systems:
  - (ad) to support the Chief Censor to review approved self-rating systems used by specified CVoD providers (*see* section 46H):



- (b) to determine any question relating to the character of a publication referred to it by a court pursuant to section 29(1) or section 41(3) in any civil or criminal proceedings (including proceedings under section 116):
  - (c) to determine, in accordance with section 27, whether or not, in the case of any publication classified as a restricted publication, conditions should be imposed in respect of the public display of that publication, or any advertising poster or, as the case requires, any film poster relating to the publication, or both, and if so, what conditions:
  - (d) to examine, in accordance with regulations made under this Act, any film poster used or intended to be used in relation to the public supply or public exhibition of any film submitted to the Classification Office under section 12 or section 13:
  - (e) to determine any application made under section 44 for an exemption from the provisions of this Act in respect of any publication:
  - (f) to exercise and perform such other functions, powers, and duties as are conferred or imposed on the Classification Office by or under this Act or any other enactment.
- (2) Except as expressly provided otherwise in this or another Act, the Classification Office must act independently in performing its statutory functions and duties, and exercising its statutory powers, under—
- (a) this Act; and
  - (b) any other Act that expressly provides for the functions, powers, or duties of the Classification Office (other than the Crown Entities Act 2004).

Section 77(1)(aa): inserted, on 10 August 2020, by section 17 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 77(1)(ab): inserted, on 10 August 2020, by section 17 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 77(1)(ac): inserted, on 10 August 2020, by section 17 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 77(1)(ad): inserted, on 10 August 2020, by section 17 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 77(2): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **78 Powers of Classification Office**

*[Repealed]*

Section 78: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **79 Membership of Classification Office**

- (1) The Classification Office consists of the Chief Censor and the Deputy Chief Censor.

- (2) The Chief Censor and the Deputy Chief Censor are the board for the purposes of the Crown Entities Act 2004.
- (3) The Chief Censor and the Deputy Chief Censor hold office as chairperson and deputy chairperson of the board respectively, for the same term as they hold office as Chief Censor and Deputy Chief Censor, for the purposes of the Crown Entities Act 2004.
- (4) Subsection (3) applies despite anything to the contrary in Schedule 5 of that Act.

Section 79: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **80 Appointments to Classification Office**

- (1) The Chief Censor and the Deputy Chief Censor must be appointed under section 28(1)(b) of the Crown Entities Act 2004 by the Governor-General on the recommendation of the Minister acting with the concurrence of the Minister of Women's Affairs and the Minister of Justice.
- (2) The Chief Censor may from time to time, under clause 2 of Schedule 1, appoint as classification officers persons to assist the Chief Censor and the Deputy Chief Censor in carrying out their functions and powers under this Act.
- (3) In considering whether or not to recommend to the Governor-General the appointment, under subsection (1), of any person, the Minister shall have regard not only to the person's personal attributes but also to the person's knowledge of or experience in the different aspects of matters likely to come before the Classification Office.
- (3A) Subsection (3) does not limit section 29 of the Crown Entities Act 2004.
- (4) In considering the suitability of any person for appointment pursuant to subsection (2), the Chief Censor shall have regard not only to the person's personal attributes but also to the person's knowledge of or experience in the different aspects of matters likely to come before the Classification Office.
- (5) Clause 1 of Schedule 5 of the Crown Entities Act 2004 does not apply.

Compare: 1983 No 130 s 5(1), (4); 1987 No 85 s 16(2)

Section 80(1): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 80(3A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 80(5): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **81 Term of office**

- (1) A person appointed under section 80 may be appointed for any period not exceeding 3 years, and may from time to time be reappointed for any period not exceeding 3 years.
- (2) Subsection (1) applies despite section 32(1)(b) of the Crown Entities Act 2004.

- (3) Clause 2 of Schedule 5 of the Crown Entities Act 2004 does not apply.

Section 81: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **82 Continuation in office after term expires**

*[Repealed]*

Section 82: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **83 Vacation of office as chairperson and deputy chairperson**

Clauses 3 and 4 of Schedule 5 of the Crown Entities Act 2004 do not apply.

Section 83: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **84 Holding of other offices**

- (1) Neither the Chief Censor nor the Deputy Chief Censor may be a member of a local authority.

- (2) This section does not limit section 30 of the Crown Entities Act 2004.

Section 84: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **85 Administration of Classification Office**

- (1) The Chief Censor is responsible for matters of administration in relation to the Classification Office, including—

(a) the allocation of spheres of responsibility between the Chief Censor and the Deputy Chief Censor; and

(b) the allocation of duties among the classification officers.

- (2) In other respects, section 25 of the Crown Entities Act 2004 applies.

- (3) Subject to subsection (1), the Board may delegate the statutory functions and powers of the Classification Office only to the Chief Censor, the Deputy Chief Censor, or a classification officer.

- (4) In other respects, section 73 of the Crown Entities Act 2004 applies.

Section 85: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **86 Exercise of powers by Deputy Chief Censor**

- (1) On the occurrence from any cause of a vacancy in the office of Chief Censor, and in the case of absence from duty of the person appointed as Chief Censor (from whatever cause arising), and for as long as any such vacancy or absence continues, the Deputy Chief Censor shall have and may exercise all the powers, duties, and functions of the Chief Censor under this Act.

- (2) The fact that the Deputy Chief Censor exercises any power, duty, or function of the Chief Censor shall be conclusive evidence of his or her authority to do so.

- (3) Clause 5(2) of Schedule 5 of the Crown Entities Act 2004 does not apply.

Section 86(3): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

### **87 Chief Censor may delegate powers**

- (1) The Chief Censor may, from time to time, delegate any of his or her powers and functions under this Act (other than this power of delegation) to the Deputy Chief Censor.
- (2) Any such delegation may be made subject to such restrictions and conditions as the Chief Censor thinks fit, and may be made either generally or in relation to any particular case or class of cases.
- (3) Subject to any restrictions or conditions imposed by the Chief Censor, the Deputy Chief Censor may exercise or perform the delegated powers in the same manner and with the same effect as if they had been conferred by this section and not by delegation.
- (4) Where the Deputy Chief Censor purports to act pursuant to any such delegation, he or she shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.
- (5) Any delegation under this section may be revoked at any time, and no delegation of any power or function shall prevent the exercise of that power or function by the Chief Censor.
- (6) Until any such delegation is revoked, it shall continue in force according to its tenor. In the event of the Chief Censor ceasing to hold office, it shall continue to have effect as if made by the Chief Censor's successor in office.

### **88 Information Unit**

- (1) There shall be a unit within the Classification Office called the Information Unit.
- (2) The functions of the Information Unit are as follows:
- (a) to provide the Classification Office with such research services as may be necessary to enable the Classification Office to perform its functions effectively;
  - (b) to disseminate to the public information about—
    - (i) the functions and powers of the Classification Office; and
    - (ii) the procedures for the classification of publications;
  - (c) to receive inquiries and complaints concerning the operation of the classification system established under this Act.

### **89 Annual report**

*[Repealed]*

Section 89: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**90 Further provisions relating to Classification Office**

The provisions set out in Schedule 1 shall have effect in relation to the Classification Office.

*Film and Literature Board of Review*

**91 Film and Literature Board of Review**

There is hereby established a Board called the Film and Literature Board of Review.

**92 Function**

The function of the Board is to review the classification of any publication referred to it under section 41(3) or submitted to it in accordance with Part 4.

Compare: 1983 No 130 s 27; 1987 No 85 s 33

**93 Membership**

- (1) The Board shall consist of 9 members.
- (2) The members of the Board shall be appointed by the Governor-General on the recommendation of the Minister acting with the concurrence of the Minister of Women's Affairs and the Minister of Justice.
- (3) One member of the Board shall be appointed as President and another shall be appointed as Deputy President.
- (4) No person shall be appointed as the President of the Board unless that person has held a practising certificate as a barrister or solicitor for at least 7 years, whether or not that person holds or has held judicial office.
- (5) In making any recommendation to the Governor-General under subsection (2), the Minister shall have regard to the need to ensure that the membership of the Board includes persons with knowledge of, or experience in, the different aspects of matters likely to come before the Board.
- (6) No act or proceeding of the Board, or of any person acting as a member of the Board, shall be invalidated because there was a vacancy in the membership of the Board at the time of the act or proceeding, or because of the subsequent discovery that there was a defect in the appointment of a person so acting, or that the person was incapable of being, or had ceased to be, a member.

**94 Term of office**

- (1) Subject to section 96, every member of the Board may be appointed for any period not exceeding 3 years, and may be reappointed for 1 further period not exceeding 3 years.
- (2) Nothing in subsection (1) prevents the appointment under section 93 of any person who has previously held office under that section, but no such person shall be so appointed unless at least 3 years have elapsed since that person last held office under that section.

**95 Continuation in office after term expires**

Notwithstanding section 94, every member of the Board whose term of office has expired shall, unless he or she sooner dies or vacates office under section 96, continue to hold office, by virtue of the appointment for the term that has expired, until—

- (a) that member is reappointed; or
- (b) a successor to that member is appointed; or
- (c) that member is informed in writing by the Minister that the member is not to be reappointed and is not to hold office until a successor is appointed.

Section 95(b): amended, on 22 February 2005, by section 22 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

**96 Extraordinary vacancies**

- (1) Any member of the Board may at any time be removed from office by the Governor-General on the recommendation of the Minister for inability to perform the duties of office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.
- (2) Any member of the Board may at any time resign his or her office by giving written notice to that effect to the Minister.
- (3) If a member dies, resigns, or is removed from office, the vacancy so created shall be filled in the same manner as the appointment of the member vacating office.

**97 Appointment of deputies**

- (1) If the President of the Board is unable by reason of illness, absence from New Zealand, or other sufficient cause to attend any meeting of the Board or to adjudicate on any particular matter, the Deputy President shall act as the President and shall, while so acting, have all the powers of the President at that meeting or for the purposes of adjudicating on that matter.
- (2) The fact that the Deputy President exercises any power, duty, or function of the President shall be conclusive evidence of the Deputy President's authority to do so.
- (3) If both the President and the Deputy President of the Board are unable by reason of illness, absence from New Zealand, or other sufficient cause to attend any meeting of the Board or to adjudicate on any particular matter, the Minister may appoint any other member of the Board to act in the place of the President at that meeting or for the purposes of adjudicating on that matter, upon and subject to such terms and conditions (if any) as the Minister may specify.
- (4) Any person appointed under subsection (3) shall, subject to any terms and conditions specified by the Minister, have all the powers of the President at that meeting or for the purposes of adjudicating on that matter.

- (5) If any member of the Board (other than the President) is unable by reason of illness, absence from New Zealand, or other sufficient cause to attend any meeting of the Board, the Minister may appoint any person to act in the place of that member at that meeting, upon and subject to such terms and conditions (if any) as the Minister may specify.
- (6) No appointment of any person under this section and no acts done by that person while acting as the President or any other member of the Board, and no act done by the Board while any person is acting as such, shall in any proceedings be questioned on the ground that the occasion of that person's appointment had not arisen or had ceased.

Compare: 1983 No 130 s 26; 1987 No 85 s 32

## 98 Application of certain Acts to members

No person shall be deemed to be employed in the service of the Crown for the purposes of the Public Service Act 2020 or the Government Superannuation Fund Act 1956 by reason only of that person's appointment as a member of the Board.

Section 98: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

## 99 Fees and travelling allowances

- (1) A member of the Board is entitled—
  - (a) to receive remuneration not within paragraph (b) for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework; and
  - (b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.
- (2) For the purposes of subsection (1)(b), **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

Section 99: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## 100 Meetings of Board

- (1) The Board of Review shall meet for the conduct of its business at such times and places as it considers necessary.
- (2) Subject to section 101, every review shall be conducted by the President and at least 4 other members of the Board.
- (3) Every question before a meeting of the Board as constituted under subsection (2) or under section 101 shall be determined by the opinion of the majority of members at the meeting, and when the members are equally divided in their opinions, that of the person who is presiding at the meeting shall prevail.

- (4) Subject to the provisions of this Act, the Board shall determine its own procedure.

#### **101 Board may sit in divisions**

- (1) The President may, from time to time, if he or she considers it appropriate in a particular case or class of case, determine that the Board shall sit in divisions, and all the powers of the Board may be exercised by any such division.
- (2) Each division shall consist of not fewer than 3 members of the Board who are for the time being assigned to that division by the President of the Board, together with the President or Deputy President of the Board, as the President of the Board determines.
- (3) The President of the Board shall determine in each case which division of the Board shall conduct a particular review.
- (4) A division of the Board may exercise any powers of the Board even though another division of the Board is exercising any powers of the Board at the same time.

Compare: 1991 No 71 s 125

#### **102 Provision of administrative services to Board**

The Secretary shall arrange for there to be furnished to the Board such secretarial, recording, and other services as may be necessary to enable the Board to exercise its functions and powers.

### *Inspectors of Publications*

#### **103 Inspectors of Publications**

- (1) The Secretary may from time to time appoint under the Public Service Act 2020 such number of persons to be Inspectors of Publications as are required for the purposes of this Act.
- (2) Notwithstanding subsection (1), the Secretary may from time to time appoint any suitable person to be an Inspector of Publications for the purposes of this Act.
- (3) Every constable shall be deemed to be an Inspector for the purposes of this Act.

Compare: 1983 No 130 s 67; 1987 No 85 s 66; 1990 No 58 s 10

Section 103(1): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 103(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

#### **104 Inspectors who are not public servants**

- (1) Every person appointed under section 103(2)—



- (a) shall be appointed on such terms and conditions as the Secretary thinks fit:
  - (b) may be paid, out of money appropriated by Parliament for the purpose, such remuneration as the Secretary from time to time determines.
- (2) No person appointed under section 103(2) shall by reason only of that appointment be deemed to be employed in the service of the Crown for the purposes of the Public Service Act 2020 or the Government Superannuation Fund Act 1956.
- (3) For the purposes of the Ombudsmen Act 1975 and the Official Information Act 1982, every person who holds office under section 103(2) shall be deemed to be employed in the Department of Internal Affairs.

Section 104(2): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

#### **105 Authority to act as Inspector**

- (1) The Secretary shall issue to every person appointed as an Inspector a warrant authorising that person to exercise the powers conferred on Inspectors under sections 106 to 108.
- (2) Every such warrant shall contain—
- (a) a reference to this section; and
  - (b) the full name of the Inspector; and
  - (c) a reference to the powers set out in section 106.
- (3) The production by an Inspector of—
- (a) a warrant issued under this section; or
  - (b) any evidence that that person is a constable—
- shall, in the absence of evidence to the contrary, be sufficient authority for any such Inspector to do anything authorised by this Act.
- (4) Every person (other than a constable) who ceases to hold office as an Inspector shall surrender to the Secretary the warrant issued to that person under subsection (1).

Compare: 1983 No 130 s 68; 1987 No 85 s 67; 1990 No 58 s 10(2)(c)

Section 105(3)(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 105(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

## Part 7

### Search and seizure

#### 106 Powers of Inspectors

- (1) Every Inspector may enter any premises (not being a private residence) in which—
  - (a) films are offered for public supply; or
  - (b) publications are publicly displayed; or
  - (c) film is exhibited to the public or in which the Inspector has reason to believe that film is being exhibited to the public—  
for the purpose of ensuring that—
    - (d) the provisions of this Act, and of any regulations made under this Act, relating to the labelling of films; and
    - (e) any conditions imposed pursuant to section 27—  
are being complied with.
- (2) An Inspector shall not enter any such premises at any time when those premises are not open to the public, unless accompanied by, or with the knowledge of, the owner or occupier of the premises into which entry is intended, or the representative or agent or employee of that person.
- (3) Every Inspector shall, on entering any premises pursuant to subsection (1), and at any other time when required to do so by the owner or occupier of the premises or by that person's representative, agent, or employee, produce the warrant issued to the Inspector under section 105 or, in the case of a constable, evidence that that person is a constable.
- (4) In the exercise of the powers conferred by subsection (1), an Inspector may—
  - (a) require the production for inspection by that Inspector of any document that relates to the labelling or classification of any film, or the classification of any publication that is a restricted publication, and that is issued under or required by this Act, and may take copies of or extracts from any such document; and
  - (b) demand any information that the Inspector may reasonably require for the purposes of the inspection.
- (5) No person shall be required to answer any question by an Inspector if the answer would or could tend to incriminate that person, and that person shall be informed of that right before an Inspector exercises the power to demand information conferred by this section.

Compare: 1983 No 130 s 69(1)–(5); 1987 No 85 s 68(1)–(5); 1990 No 58 s 10(2)(d)

Section 106(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

**107 Inspector may seize publications**

- (1) Without limiting section 106, where an Inspector discovers any person offering for public supply, or exhibiting to the public, any film (not being a film that is exempted, by section 7 or section 8, from the provisions of section 6), and—
- (a) the Inspector believes, on reasonable grounds, that no label has been issued under this Act in respect of that film; or
  - (b) the film is being offered for public supply, or exhibited to the public, in contravention of subsection (1)(b) or subsection (2)(b) or subsection (3) of section 120,—

the Inspector may seize the film, and any cassette, case, or other container in or on which that film is kept or offered for public supply, and deliver them to the Secretary.

- (2) Without limiting section 106, where—
- (a) an Inspector discovers any person publicly displaying any publication; and
  - (b) the Inspector believes, on reasonable grounds,—
    - (i) that the publication is a restricted publication or, by virtue of a serial publication order, is to be treated as a restricted publication; and
    - (ii) that the public display of the publication constitutes an offence under section 130, 133, or 133A,—

the Inspector may seize the publication and deliver it to the Secretary.

- (3) Without limiting section 106, where—
- (a) an Inspector discovers any person publicly displaying—
    - (i) any advertising poster; or
    - (ii) any film poster—relating to a restricted publication or a publication that, by virtue of a serial publication order, is to be treated as a restricted publication; and
  - (b) the Inspector believes, on reasonable grounds, that the public display of the poster constitutes an offence under section 130, 133, or 133A,—

the Inspector may seize the poster and deliver it to the Secretary.

- (4) Subject to subsection (5), the Secretary may retain any publication, advertising poster, or film poster delivered to him or her under subsection (1) or subsection (2) or subsection (3), and the publication, advertising poster, or film poster shall subsequently be dealt with in accordance with section 118; and the provisions of that section, with any necessary modifications, shall apply accordingly.
- (5) The Secretary may, at any time, return the publication, advertising poster, or film poster to the person entitled to it, subject to any such conditions relating to

compliance with the provisions of this Act with respect to the publication, advertising poster, or film poster as the Secretary may specify.

Compare: 1983 No 130 s 69(6), (7); 1987 No 85 s 68(6)

Section 107(2)(b)(ii): amended, on 5 December 2017, by section 8(1) of the Films, Videos, and Publications Classification (Interim Restriction Orders) Amendment Act 2017 (2017 No 43).

Section 107(3)(b): amended, on 5 December 2017, by section 8(2) of the Films, Videos, and Publications Classification (Interim Restriction Orders) Amendment Act 2017 (2017 No 43).

### **108 Seizure of objectionable publications**

- (1) Subject to subsection (2), where an Inspector or a constable, in the course of carrying out his or her lawful duties, discovers any publication that he or she believes, on reasonable grounds, to be objectionable, that person may, without further authority than this section, seize that publication.
- (2) Nothing in subsection (1) applies to any publication that is in the possession of any person in circumstances in which, by virtue of subsection (4) or subsection (5) of section 131, the possession of that publication by that person is not an offence against subsection (1) of that section.

Section 108(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **109 Search warrants for offences against specified sections (other than sections 126 and 131A)**

An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may, on an application in the manner provided in subpart 3 of Part 4 of that Act, issue a search warrant if satisfied that there are reasonable grounds for believing that there is in or on any place or thing—

- (a) any objectionable publication that there are reasonable grounds to believe is being kept for the purpose of being so dealt with as to constitute an offence against section 123 or section 124 or section 127 or section 129; or
- (b) any thing that there are reasonable grounds to believe will be evidence of the commission of an offence of that kind; or
- (c) any thing that there are reasonable grounds to believe is intended to be used for the purpose of committing an offence of that kind.

Section 109: substituted, on 22 February 2005, by section 23(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 109: amended, on 1 October 2012, by section 242(1) of the Search and Surveillance Act 2012 (2012 No 24).

### **109A Search warrants from District Court Judges for offences against sections 126 and 131A**

- (1) A District Court Judge may, on an application made in the manner provided in subpart 3 of Part 4 of the Search and Surveillance Act 2012, issue a search warrant if satisfied—

- (a) that there are reasonable grounds for believing that there is in or on any place or thing—
    - (i) a publication that there are reasonable grounds to believe is being so dealt with as to constitute an offence against section 126 (offences involving knowledge in relation to restricted publications); or
    - (ii) any thing that there are reasonable grounds to believe will be evidence of the commission of an offence against section 126; or
    - (iii) an objectionable publication that there are reasonable grounds to believe is being so dealt with as to constitute an offence against section 131A (offences relating to possession of objectionable publications and involving knowledge); or
    - (iv) any thing that there are reasonable grounds to believe will be evidence of the commission of an offence against section 131A; and
  - (b) that in all the circumstances it is reasonable to do so.
- (2) In considering whether to issue a warrant under this section, the District Court Judge must have regard to—
- (a) the nature and seriousness of the alleged offending to which the application relates; and
  - (b) any information provided by the applicant about the importance, to the investigation of the offence, of the issue of a warrant; and
  - (c) any other matter the Judge considers relevant.

Section 109A: inserted, on 22 February 2005, by section 23(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 109A(1): amended, on 8 September 2018, by section 52 of the Statutes Amendment Act 2018 (2018 No 27).

### **109B Search warrants from Registrars, etc, for offences against section 126 or section 131A**

A person who is authorised to act as an issuing officer under section 108 of the Search and Surveillance Act 2012 may, on an application made in the manner provided in subpart 3 of Part 4 of that Act, issue a search warrant if satisfied—

- (a) that, in the particular case,—
  - (i) that all reasonable efforts have been made to obtain a warrant under section 109A; but
  - (ii) that no District Court Judge is available to deal with an application under section 109A; and
  - (iii) that delaying a search until a warrant under section 109A could be obtained would create a real risk that the purpose of that search would be frustrated; and

- (b) that there are reasonable grounds for believing that there is in or on any place or thing—
- (i) a publication that there are reasonable grounds to believe is being so dealt with as to constitute an offence against section 126 (offences involving knowledge in relation to restricted publications); or
  - (ii) any thing that there are reasonable grounds to believe will be evidence of the commission of an offence against section 126; or
  - (iii) an objectionable publication that there are reasonable grounds to believe is being so dealt with as to constitute an offence against section 131A (offences relating to possession of objectionable publications and involving knowledge); or
  - (iv) any thing that there are reasonable grounds to believe will be evidence of the commission of an offence against section 131A.

Section 109B: inserted, on 22 February 2005, by section 23(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 109B: amended, on 8 September 2018, by section 53 of the Statutes Amendment Act 2018 (2018 No 27).

Section 109B: amended, on 1 October 2012, by section 242(3) of the Search and Surveillance Act 2012 (2012 No 24).

### **109C Who may apply for search warrants**

An application under section 109 or section 109A or section 109B may be made by an Inspector or a constable.

Section 109C: inserted, on 22 February 2005, by section 23(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 109C: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

### **110 Application of Part 4 of Search and Surveillance Act 2012**

- (1) The provisions of Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) apply in respect of any search warrant issued under section 109, 109A, or 109B.
- (2) This section is subject to sections 115 to 117.

Section 110: replaced, on 1 October 2012, by section 243 of the Search and Surveillance Act 2012 (2012 No 24).

### **111 Powers conferred by warrant**

*[Repealed]*

Section 111: repealed, on 1 October 2012, by section 243 of the Search and Surveillance Act 2012 (2012 No 24).

### **111A Power to stop vehicles**

*[Repealed]*

Section 111A: repealed, on 1 October 2012, by section 243 of the Search and Surveillance Act 2012 (2012 No 24).

### **112 Person executing warrant to produce evidence of authority**

*[Repealed]*

Section 112: repealed, on 1 October 2012, by section 243 of the Search and Surveillance Act 2012 (2012 No 24).

### **113 Notice of execution of warrant**

*[Repealed]*

Section 113: repealed, on 1 October 2012, by section 243 of the Search and Surveillance Act 2012 (2012 No 24).

### **114 Custody of property seized**

*[Repealed]*

Section 114: repealed, on 1 October 2012, by section 243 of the Search and Surveillance Act 2012 (2012 No 24).

### **115 Summons to be issued**

- (1) Subject to section 136(2), where any publication is seized under section 108, a summons shall be issued calling on the person from whom it was seized to appear before the District Court presided over by a District Court Judge to show cause why the publication should not be destroyed.
- (2) Subject to section 136(2), where any publication is seized under a search warrant, a summons shall be issued calling on the owner or occupier of the place or thing searched to appear before the District Court presided over by a District Court Judge to show cause why the publication should not be destroyed.
- (3) It shall not be necessary to issue a summons under subsection (1) or subsection (2) in respect of any publication that the Classification Office or the Board has classified as an unrestricted publication or as a restricted publication.

Compare: 1963 No 22 s 25(2); 1987 No 85 s 57(2), (2A); 1990 No 59 s 9

Section 115(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 115(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### **116 Disposal of publications seized**

- (1) Subject to subsections (2) and (3), if, on the hearing of a summons issued pursuant to section 115 in respect of a publication, the court is satisfied, after reference to the Classification Office if necessary, that the publication is objectionable, it may order the publication to be destroyed at the expiry of 10 working

days from the making of the order, and the publication shall in the meantime be impounded.

- (2) The court shall not make an order under subsection (1) for the destruction of a publication if it considers it necessary that the publication be preserved as evidence in any further proceedings.
- (3) Notwithstanding that the court is satisfied that the publication to which the summons relates is objectionable, the court may order the return of the publication to the person from whom it was seized (in the case of a publication seized under section 108) or to the owner or occupier of the place or thing searched (in the case of a publication seized under a search warrant) if the court is satisfied that, by virtue of subsection (4) or subsection (5) of section 131, the possession of that publication by that person is not an offence against section 131(1).
- (4) If, on the hearing of a summons issued pursuant to section 115 in respect of a publication, the court is satisfied that the publication is an unrestricted publication or a restricted publication, it shall forthwith direct it to be returned to the person from whom it was seized (in the case of a publication seized under section 108) or to the owner or occupier of the place or thing searched (in the case of a publication seized under a search warrant).

Compare: 1963 No 22 s 25(3), (4); 1987 No 85 s 57(3), (4)

### **117 Appeal against order for destruction**

- (1) Any person aggrieved by an order made under section 116(1) for the destruction of any publication may (whatever the amount involved) appeal from that order in the manner provided by the Criminal Procedure Act 2011, and until such appeal is determined or abandoned the order shall be suspended and shall not be carried into effect.
- (2) Nothing in subsection (1) confers on any person any right to appeal to the High Court, other than under section 58, against any decision of the Classification Office or the Board in respect of any publication.

Compare: 1963 No 22 s 25(5); 1987 No 85 s 57(5), (6)

Section 117(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **118 Disposal of things seized**

*[Repealed]*

Section 118: repealed, on 1 October 2012, by section 244 of the Search and Surveillance Act 2012 (2012 No 24).

### **118A Application of Customs and Excise Act 2018**

- (1) Sections 191, 199, 206, 210, 211, 224, 225, 231, 237, 244, 245, 247, 248, 249, 257, and 258 of the Customs and Excise Act 2018 apply to offences against this Act concerning the importation or exportation of objectionable publica-



tions to the same extent as those sections apply to offences against section 390 of the Customs and Excise Act 2018 concerning the importation or exportation of objectionable publications.

- (2) Section 252 of the Customs and Excise Act 2018 applies to an investigation of an offence against this Act concerning the importation or exportation of objectionable publications to the same extent as that section applies to an investigation of an offence against that Act; and section 254 of that Act applies accordingly.
- (3) A Customs officer may arrest a person without warrant in accordance with section 263(1) of the Customs and Excise Act 2018, as if the person were suspected of an offence against section 390 of that Act, if the Customs officer has reasonable cause to suspect that the person has committed an offence against section 124(1) involving—
  - (a) the importation into New Zealand of an objectionable publication for the purposes of supply or distribution; or
  - (b) the supply or distribution, by way of exportation from New Zealand, of an objectionable publication.
- (4) Section 263(2) and (3) of the Customs and Excise Act 2018 applies to an arrest by a Customs officer under subsection (3).
- (5) Nothing in this section limits the application of any provisions of the Customs and Excise Act 2018 that confer powers (for example, powers relating to prohibited goods).

Section 118A: replaced, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

### **119 No action to lie**

No action shall lie against any person for any act done in good faith in pursuance or intended pursuance of any provision of this Part or of any warrant or order issued or made in pursuance or intended pursuance of any such provision.

Compare: 1963 No 22 s 25(6); 1987 No 85 s 57(7)

## **Part 8 Offences**

### *Offences relating to labelling*

#### **120 Non-compliance with labelling requirements**

- (1) Every person commits an offence against this Act who supplies to the public or offers for supply to the public—
  - (a) any film in respect of which no label has been issued under this Act; or

- (b) any film that, in contravention of regulations made under this Act, does not have displayed either on it or on any cassette, case, or other container in or on which that film is supplied to the public or offered for supply to the public, the label issued under this Act in respect of that film.
- (2) Every person commits an offence against this Act who—
  - (a) exhibits to the public or makes available any film in respect of which no label has been issued under this Act; or
  - (b) in contravention of regulations made under this Act,—
    - (i) fails to display, in the prescribed form and manner, the contents of any label issued under this Act in respect of a film; or
    - (ii) fails to advertise, in the prescribed form and manner, the contents of any such label.
- (3) Every person commits an offence against this Act who supplies to the public or offers for supply to the public any film at a time when that film, or the cassette, case, or other container in or on which that film is supplied to the public or offered for supply to the public, has displayed on it, otherwise than in accordance with regulations made under this Act, the label issued under this Act in respect of that film.
- (4) Nothing in this section shall apply in relation to the public supply or public exhibition of a film that is exempted by section 7 or section 8 from the requirements of section 6 and section 46C.
- (5) Every person who commits an offence against subsection (1) or subsection (2) or subsection (3) is liable on conviction to a fine not exceeding,—
  - (a) in the case of an individual, \$3,000;
  - (b) in the case of a body corporate, \$10,000.

Compare: 1983 No 130 s 24; 1987 No 85 s 14

Section 120(1)(b): amended, on 1 October 2012, by section 21(1) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 120(2)(a): amended, on 1 August 2021, by section 18(1) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 120(3): amended, on 1 October 2012, by section 21(2) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 120(4): amended, on 1 August 2021, by section 18(2) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 120(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## 121 Unlawful issue of labels

- (1) Every person commits an offence against this Act who, not being the labelling body or a specified CVoD provider using an approved self-rating system issues or purports to issue any label that is intended or is likely, by reason of its word-

ing or appearance, or in any other manner, to cause any person to believe, contrary to the fact, that the label was issued under this Act.

- (2) Every person who commits an offence against this section is liable on conviction to a fine not exceeding,—
- (a) in the case of an individual, \$3,000;
  - (b) in the case of a body corporate, \$10,000.

Compare: 1987 No 85 s 13(4)

Section 121(1): amended, on 1 August 2021, by section 19 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 121(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Offences involving objectionable or restricted publications*

#### **122 Meaning of distribute in sections 123 to 132**

- (1) In sections 123 to 132, unless the context otherwise requires, **distribute**, in relation to a publication, means—
- (a) to deliver, give, or offer the publication; or
  - (b) to provide access to the publication (for example, to make available digital content that is or includes the publication by means of a public data network).
- (2) However, a person does not distribute a publication unless the person—
- (a) intends, or knows of, the act of distribution; and
  - (b) knows what, in general terms, the publication is or contains.
- (3) To avoid doubt, **to distribute**, in relation to a publication, does not include to facilitate access to the publication by providing only some or all of the means necessary for—
- (a) delivery of the publication in physical form; or
  - (b) transmission (other than by broadcasting) of the contents of the publication.
- (4) Examples of a person facilitating access to a publication in the ways referred to in subsection (3) are—
- (a) a postal operator or courier providing only some or all of the means necessary for delivering the publication in physical form; and
  - (b) a network operator or service provider providing only a network or facility through which the contents of the publication are transmitted.

Section 122: substituted, on 22 February 2005, by section 25 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 122(1)(b): amended, on 1 August 2021, by section 20 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

**122A Definitions for section 122**

In section 122,—

**courier** means a person carrying on business as a courier

**digital content**—

- (a) means information that is kept on a data storage device and accessed, or available for access, through a public data network; but
- (b) does not include email, or information that is transmitted in the form of a broadcasting service

**network operator** has the same meaning as in section 3 of the Telecommunications (Interception Capability and Security) Act 2013

**postal operator** has the same meaning as in section 2(1) of the Postal Services Act 1998

**public data network** has the same meaning as in section 5 of the Telecommunications Act 2001

**service provider**—

- (a) means a person providing Internet access, email access, or both of those facilities, by means of a public data network; but
- (b) does not include a network operator.

Section 122A: inserted, on 22 February 2005, by section 25 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 122A **network operator**: amended, on 13 November 2018, by section 40 of the Telecommunications (New Regulatory Framework) Amendment Act 2018 (2018 No 48).

Section 122A **network operator**: amended, on 11 May 2014, by section 123 of the Telecommunications (Interception Capability and Security) Act 2013 (2013 No 91).

**123 Offences of strict liability relating to objectionable publications**

- (1) Every person commits an offence against this Act who—
  - (a) makes an objectionable publication; or
  - (b) makes a copy of an objectionable publication for the purposes of supply, distribution, display, or exhibition to any other person; or
  - (c) imports into New Zealand an objectionable publication for the purposes of supply or distribution to any other person; or
  - (d) supplies or distributes (including in either case by way of exportation from New Zealand) an objectionable publication to any other person; or
  - (e) has in that person's possession, for the purposes of supply or distribution to any other person, an objectionable publication; or
  - (f) in expectation of payment or otherwise for gain, or by way of advertisement, displays or exhibits an objectionable publication to any other person.

- (2) Every person who commits an offence against subsection (1) is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$10,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$30,000.
- (3) It shall be no defence to a charge under subsection (1) that the defendant had no knowledge or no reasonable cause to believe that the publication to which the charge relates was objectionable.
- (4) Without limiting the generality of this section, a publication may be—
- (a) supplied (within the meaning of that term in section 2) for the purposes of any of paragraphs (b) to (e) of subsection (1); or
  - (b) distributed (within the meaning of that term in section 122) for the purposes of any of paragraphs (b) to (e) of subsection (1); or
  - (c) imported into New Zealand for the purposes of paragraph (c) of subsection (1),—

not only in a physical form but also by means of the electronic transmission (whether by way of facsimile transmission, electronic mail, or other similar means of communication, other than by broadcasting) of the contents of the publication.

Compare: 1963 No 22 s 21(1)(a)–(c), (e), (h), (i), (2); 1982 No 27 s 3(1); 1987 No 85 ss 51(1)(a)–(d), (g), (i), (2), 70(3)

Section 123(1)(c): substituted, on 22 February 2005, by section 26(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 123(1)(d): substituted, on 22 February 2005, by section 26(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 123(1)(e): substituted, on 22 February 2005, by section 26(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 123(1)(f): substituted, on 22 February 2005, by section 26(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 123(2): substituted, on 22 February 2005, by section 26(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 123(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 123(4)(a): substituted, on 22 February 2005, by section 26(3) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 123(4)(b): substituted, on 22 February 2005, by section 26(3) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 123(4)(c): added, on 22 February 2005, by section 26(3) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

## 124 Offences involving knowledge in relation to objectionable publications

- (1) Every person commits an offence against this Act who does any act mentioned in section 123(1), knowing or having reasonable cause to believe that the publication is objectionable.

- (2) Every person who commits an offence against subsection (1) is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 14 years:

(b) in the case of a body corporate, to a fine not exceeding \$200,000.

Compare: 1963 No 22 s 22(1)(a), (2); 1987 No 85 s 52(1)(a), (2)

Section 124(2): substituted, on 22 February 2005, by section 27 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 124(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 124(2)(a): amended, on 7 May 2015, by section 4 of the Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015 (2015 No 42).

#### 124A Where distribution, importation, etc, not an offence

- (1) Nothing in section 123 or section 124 makes it an offence for a person referred to in any of paragraphs (a) to (l) of section 131(4) to do any or all of the following things for the purpose of, and in connection with, his or her official duties:
- (a) import a publication into New Zealand (whether with the involvement of an overseas official or not):
- (b) export a publication from New Zealand to an overseas official:
- (c) distribute a publication to a person referred to in any of paragraphs (a) to (l) of section 131(4) if that person takes possession of the publication for the purpose of, and in connection with, his or her official duties:
- (d) make a copy of a publication for the purposes of distribution of the kind specified in paragraph (c):
- (e) be in possession of a publication for the purposes of distribution of the kind specified in paragraph (c).
- (2) In subsection (1), **overseas official** means a person in a country other than New Zealand who holds an office in that country that corresponds to an office referred to in section 131(4), and who is exercising or performing the duties, functions, or powers of that office.
- (3) This subsection applies to a charge under section 123 or section 124 that the defendant—
- (a) distributed a publication; or
- (b) made a copy of a publication for the purposes of distribution to any other person; or
- (c) possessed a publication for the purposes of distribution to any other person.

- (4) It is a defence to a charge to which subsection (3) applies if the defendant proves that the act to which that charge relates was done, in good faith, in accordance with any of paragraphs (a) to (f) of section 131(5).

Section 124A: inserted, on 22 February 2005, by section 28 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

## **125 Offences of strict liability involving restricted publications**

- (1) Every person commits an offence against this Act who—
- (a) supplies, distributes, exhibits, displays, or otherwise deals with a restricted publication otherwise than in accordance with the classification assigned to that publication under this Act; or
  - (b) delivers to any person any restricted publication with intent that it should be dealt with by that person or any other person in such manner as to constitute an offence against this section.
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding,—
- (a) in the case of an individual, \$3,000;
  - (b) in the case of a body corporate, \$10,000.
- (3) It shall be no defence to a charge under subsection (1) that the defendant had no knowledge or no reasonable cause to believe that the publication to which the charge relates was a restricted publication.

Compare: 1963 No 22 s 21(1)(g), (h)

Section 125(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **126 Offences involving knowledge in relation to restricted publications**

- (1) Every person commits an offence against this Act who—
- (a) does any act mentioned in section 125(1) knowing or having reasonable cause to believe that the publication is a restricted publication; or
  - (b) supplies, distributes, exhibits, or displays to any person under the age of 18 years any publication—
    - (i) that is objectionable if made available to a person of the age of the person to whom it is so supplied, distributed, exhibited, or displayed; and
    - (ii) that the person so supplying, distributing, exhibiting, or displaying it knows is likely to be classified under this Act as objectionable if made available to a person of the age of the other person.
- (2) Every person who commits an offence against subsection (1) is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000:

(b) in the case of a body corporate, to a fine not exceeding \$25,000.

Compare: 1963 No 22 s 22(1)(ab), (2); 1972 No 136 s 8(1); 1987 No 85 s 52(1)(b)

Section 126(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **127 Exhibition to persons under 18**

(1) Every person commits an offence against this Act who exhibits or displays an objectionable publication to any person under the age of 18 years.

(2) Every person who commits an offence against subsection (1) is liable on conviction,—

(a) in the case of an individual, to a fine not exceeding \$10,000:

(b) in the case of a body corporate, to a fine not exceeding \$30,000.

(3) It shall be no defence to a charge under subsection (1) that the defendant had no knowledge or no reasonable cause to believe that the publication to which the charge relates was objectionable.

(4) Every person commits an offence against this Act who exhibits or displays an objectionable publication to any person under the age of 18 years knowing or having reasonable cause to believe that the publication is objectionable.

(5) Every person who commits an offence against subsection (4) is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 10 years:

(b) in the case of a body corporate, to a fine not exceeding \$200,000.

Section 127(2): substituted, on 22 February 2005, by section 29(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 127(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 127(5): substituted, on 22 February 2005, by section 29(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 127(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **128 Circumstances when exhibition or display not an offence**

Nothing in section 123 or section 124 applies to the exhibition or display, to any person, of any publication where the publication is exhibited or displayed to that person—

(a) for educational or professional purposes; and

(b) by or at the direction of the Chief Censor; and

(c) at premises occupied by the Classification Office.



## **129 Offences in public place**

- (1) Every person commits an offence against this Act who exhibits or displays an objectionable publication in or within view of a public place.
- (2) It shall be no defence to a charge under subsection (1) that the defendant had no knowledge or no reasonable cause to believe that the publication to which the charge relates was objectionable.
- (2A) Every person who commits an offence against subsection (1) is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$10,000:
  - (b) in the case of a body corporate, to a fine not exceeding \$30,000.
- (3) Every person commits an offence against this Act who distributes an objectionable publication to any person in a public place knowing or having reasonable cause to believe that the publication is objectionable.
- (4) Every person who commits an offence against subsection (3) is liable on conviction,—
  - (a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding \$20,000:
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Compare: 1963 No 22 ss 21(1)(i), (2), 22(1)(e), (2); 1972 No 136 s 7(2); 1987 No 85 ss 51(1)(h), (2), (3), 52(1)(d), (2)

Section 129(2A): inserted, on 22 February 2005, by section 30(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 129(2A): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 129(4): substituted, on 22 February 2005, by section 30(2) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 129(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

## **130 Breach of conditions on display of restricted publications**

- (1) Every person commits an offence against this Act who—
  - (a) publicly displays any restricted publication or any film poster or advertising poster otherwise than in accordance with any condition or conditions imposed pursuant to section 27 in respect of that publication or poster; or
  - (b) publicly displays any restricted publication or any film poster or advertising poster in contravention of any such condition.
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding,—
  - (a) in the case of an individual, \$5,000:
  - (b) in the case of a body corporate, \$15,000.

- (3) It shall be no defence to a charge under this section that the defendant had no knowledge of the condition or conditions applicable to the publication or poster to which the charge relates.

Section 130(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **131 Offence to possess objectionable publication**

- (1) Every person commits an offence against this Act who, without lawful authority or excuse, has in that person's possession an objectionable publication.
- (1A) Subsection (1) is subject to subsections (4) and (5).
- (2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding,—
- (a) in the case of an individual, \$2,000;
  - (b) in the case of a body corporate, \$5,000.
- (2A) A person can have an electronic publication in that person's possession for the purposes of subsection (1) even though that person's actual or potential physical custody or control of the publication is not, or does not include, that person intentionally or knowingly using a computer or other electronic device to save the publication (or a copy of it).
- (2B) **Electronic publication**, in subsection (2A), means a thing that is a publication under paragraph (d) of the definition of publication in section 2.
- (2C) Subsection (2A) is for the avoidance of doubt, and does not limit subsection (1).
- (3) It shall be no defence to a charge under subsection (1) that the defendant had no knowledge or no reasonable cause to believe that the publication to which the charge relates was objectionable.
- (4) Nothing in subsection (1) makes it an offence for any of the following persons to be in possession of an objectionable publication, where such possession is for the purpose of and in connection with the person's official duties:
- (a) the Chief Censor;
  - (b) the Deputy Chief Censor;
  - (c) any classification officer;
  - (d) any person holding office pursuant to clause 2 of Schedule 1;
  - (e) any member of the Board;
  - (f) the labelling body or any person who is carrying out the functions of the labelling body;
  - (g) any Inspector;
  - (h) any constable;
  - (i) any officer of the Customs;

- (j) any Judge of the High Court, or District Court Judge, Coroner, Justice, or Community Magistrate:
  - (k) in relation to any publication delivered to the National Librarian pursuant to Part 4 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003, the National Librarian, any other employee in the department responsible for the administration of that Act, or any person employed in the Parliamentary Library:
  - (l) any other person in the service of the Crown.
- (5) It is a defence to a charge under subsection (1) if the defendant proves that the defendant had possession of the publication to which the charge relates, in good faith,—
- (a) for the purpose or with the intention of delivering it into the possession of a person lawfully entitled to have possession of it; or
  - (b) for the purposes of any proceedings under this Act or any other enactment in relation to the publication; or
  - (c) for the purpose of giving legal advice in relation to the publication; or
  - (d) for the purposes of giving legal advice, or making representations, in relation to any proceedings; or
  - (e) in accordance with, or for the purpose of, complying with any decision or order made in relation to the publication by the Chief Censor, the Classification Office, the Board, or any court, Judge, Justice, or Community Magistrate; or
  - (f) in connection with the delivery of the publication to the National Librarian in accordance with Part 4 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003; or
  - (g) for the purposes of rating and labelling the publication, if—
    - (i) the publication is video on-demand content; and
    - (ii) the defendant is a specified CVoD provider; and
    - (iii) the defendant assesses the content as soon as is reasonably practicable after it comes into the defendant's possession, using the defendant's approved self-rating system, and refers the content to the Classification Office for classification in accordance with section 46E(3) as soon as is reasonably practicable after the approved self-rating system identifies the content as potentially being objectionable.
- (6) Nothing in subsection (5) shall prejudice any defence that it is open to a person charged with an offence against this section to raise apart from that subsection.
- (7) For the avoidance of doubt, in this section the term **proceedings** includes proceedings before the Classification Office.

Section 131(1): amended, on 7 May 2015, by section 5(1) of the Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015 (2015 No 42).

Section 131(1A): inserted, on 7 May 2015, by section 5(2) of the Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015 (2015 No 42).

Section 131(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 131(2A): inserted, on 7 May 2015, by section 5(3) of the Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015 (2015 No 42).

Section 131(2B): inserted, on 7 May 2015, by section 5(3) of the Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015 (2015 No 42).

Section 131(2C): inserted, on 7 May 2015, by section 5(3) of the Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015 (2015 No 42).

Section 131(4)(h): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 131(4)(j): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

Section 131(4)(k): amended, on 1 February 2011, by section 18 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Amendment Act 2010 (2010 No 132).

Section 131(4)(k): amended, on 6 May 2003, by section 47 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003 (2003 No 19).

Section 131(5)(e): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

Section 131(5)(f): amended, on 6 May 2003, by section 47 of the National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003 (2003 No 19).

Section 131(5)(g): inserted, on 1 August 2021, by section 21 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

### **131A Offences relating to possession of objectionable publications and involving knowledge**

- (1) Every person commits an offence who does any act that constitutes an offence against section 131(1), knowing or having reasonable cause to believe that the publication is objectionable.
- (2) Every person who commits an offence against subsection (1) is liable on conviction,—
  - (a) in the case of an individual, to imprisonment for a term not exceeding 10 years or to a fine not exceeding \$50,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Section 131A: inserted, on 22 February 2005, by section 31(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 131A(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 131A(2)(a): amended, on 7 May 2015, by section 6 of the Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015 (2015 No 42).

### 132 Exhibiting parts of a publication

A person may be convicted of exhibiting an objectionable publication if what is exhibited is in all the circumstances objectionable, notwithstanding that it is a part only of a publication that is not objectionable or is a restricted publication.

Compare: 1963 No 22 s 22A; 1972 No 136 s 10; 1987 No 85 s 53

### 132A Aggravating factor to be taken into account in sentencing, etc, for certain publications offences

- (1) This section applies to an offence (the **offence**) if it is committed after the commencement of this section and it is an offence against—
  - (a) section 124(1); or
  - (b) section 127(4); or
  - (c) section 129(3); or
  - (d) section 131A(1); or
  - (e) section 390 of the Customs and Excise Act 2018.
- (2) In sentencing or otherwise dealing with an offender for the offence, the court must take into account as an aggravating factor the extent to which any publication that was the subject of the offence is objectionable because it does any or all of the following:
  - (a) promotes or supports, or tends to promote or support, the exploitation of children, or young persons, or both, for sexual purposes;
  - (b) describes, depicts, or otherwise deals with sexual conduct with or by children, or young persons, or both;
  - (c) exploits the nudity of children, or young persons, or both.
- (3) In deciding for the purposes of subsection (2) to what extent (if any) a publication is objectionable because it does any or all of the things specified in subsection (2)(a) to (c), the court must have regard,—
  - (a) if there is a subsisting decision of the Classification Office, or of the Board, to the reasons for the decision given by the Classification Office, under section 38, or by the Board, under section 55; and
  - (b) if the publication has been referred to the Classification Office under section 29(1) or section 41(3), to the report provided by the Classification Office to the court under section 30.
- (4) Nothing in this section affects the application of the Sentencing Act 2002 in respect of the offence.

Section 132A: inserted, on 22 February 2005, by section 32 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 132A(1)(e): replaced, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

**132B Presumption of imprisonment for repeat offenders**

- (1) This section applies only to an offender who—
  - (a) has been convicted of and is to be sentenced in respect of a specified publications offence committed after the commencement of this section (the **repeat offence**); and
  - (b) before the repeat offence was committed and the conviction for it was entered, had both committed and been convicted of 1 or more specified publications offences committed before or after that commencement.
- (2) An offence is a specified publications offence for the purposes of subsection (1) only if—
  - (a) the offence is one against a provision specified in section 132A(1)(a) to (e); and
  - (b) the publication that was the subject of the offence does (to any extent) any or all of the things specified in section 132A(2)(a) to (c).
- (3) In deciding for the purposes of subsection (2)(b) whether a publication is objectionable because it does (to any extent) any or all of the things specified in section 132A(2)(a) to (c), the court must have regard,—
  - (a) if there is a subsisting decision of the Classification Office, or of the Board, to the reasons for the decision given by the Classification Office, under section 38, or by the Board, under section 55; and
  - (b) if the publication has been referred to the Classification Office under section 29(1) or section 41(3), to the report provided by the Classification Office to the court under section 30.
- (4) The offender must be sentenced for the repeat offence to a sentence of imprisonment (within the meaning of the Sentencing Act 2002) unless the court considers that the offender should not be so sentenced, having regard to—
  - (a) the particular circumstances of the repeat offence; and
  - (b) the particular circumstances of the offender (including, without limitation, his or her age if he or she is under 20 years of age).
- (5) This section overrides, as they apply to the repeat offence, all inconsistent provisions in the Sentencing Act 2002.

Section 132B: inserted, on 7 May 2015, by section 7 of the Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015 (2015 No 42).

*Miscellaneous offences***133 Contravention of serial publication order**

- (1) A person commits an offence who fails to comply with section 37(5) or (6).
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding,—

- (a) in the case of an individual, \$3,000; or
- (b) in the case of a body corporate, \$10,000.

Section 133: replaced, on 5 December 2017, by section 9 of the Films, Videos, and Publications Classification (Interim Restriction Orders) Amendment Act 2017 (2017 No 43).

### **133A Contravention of interim restriction order**

- (1) A person commits an offence who, having knowledge of an order made in respect of a publication under section 49(3)(a) or 67(3)(a), fails to comply with that order.
- (2) A person commits an offence who, having knowledge of an order made in respect of a publication under section 49(3)(b) or (c) or 67(3)(b) or (c),—
  - (a) fails to comply with that order; or
  - (b) delivers the publication to any other person with the intention that it be dealt with by any person in contravention of the order.
- (3) A person who commits an offence under subsection (1) or (2) is liable on conviction to a fine not exceeding,—
  - (a) in the case of an individual, \$3,000; or
  - (b) in the case of a body corporate, \$10,000.

Section 133A: inserted, on 5 December 2017, by section 6 of the Films, Videos, and Publications Classification (Interim Restriction Orders) Amendment Act 2017 (2017 No 43).

### **134 Obstruction of Inspector**

Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who—

- (a) obstructs an Inspector in the performance of that Inspector's duties under this Act; or
- (b) fails to comply with any requirement of an Inspector under subsection (4) of section 106, otherwise than on the ground set out in subsection (5) of that section.

Compare: 1983 No 130 s 69(8); 1987 No 85 s 68(7)

Section 134: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **135 Failure to surrender warrant**

Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000 who fails to comply with section 105(4).

Section 135: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

*Miscellaneous provisions***136 Disposal and forfeiture following conviction**

- (1) Where any person is convicted of an offence against this Act or against any regulations made under this Act, the convicting court may, if it is satisfied, after reference to the Classification Office if necessary, that any publication the subject of the prosecution is objectionable, order that the publication be destroyed at the expiration of 10 working days from the making of the order, and the publication shall in the meantime be impounded.
- (2) It shall not be necessary to issue a summons under subsection (1) or subsection (2) of section 115 in respect of any publication that is the subject of an order made under subsection (1).
- (3) On the conviction of any person of an offence against section 123 or section 124 involving the making or copying of an objectionable publication, the convicting court may, in addition to or instead of passing any other sentence or making any other order in respect of the offence, order that any equipment, goods, or other thing used in respect of the commission of the offence be forfeited to the Crown; and anything so forfeited shall be sold, destroyed, or otherwise disposed of as the Minister directs.
- (4) Before making an order under subsection (1) or subsection (3), the court shall give—
  - (a) the person convicted; and
  - (b) any other person who, in the opinion of the court, would be directly affected by the making of the order—an opportunity to be heard.
- (5) If the court is satisfied that the publication that was the subject of the prosecution should be restored to a person other than the person convicted it may so direct.
- (6) Section 117 shall apply for the purposes of this section with such modifications as are necessary.

Compare: 1963 No 22 s 25A; 1972 No 136 s 11; 1987 No 85 s 58; 1990 No 59 s 10

**137 No action to lie**

No action shall lie against any person for any act done in good faith in pursuance or intended pursuance of section 136 or of any order made in pursuance or intended pursuance of that section.

Compare: 1963 No 22 s 25A(6); 1972 No 136 s 11; 1987 No 85 s 57(7)

**138 Liability of employers and principals**

- (1) In this section, the term **illegal action** means the supply, distribution, display, exhibition, advertisement, or making available of an objectionable publication contrary to the provisions of this Act.



- (2) Subject to subsection (4), any illegal action done by a person as the employee of another person shall, for the purposes of this Act, be treated as done by that other person as well as by the first-mentioned person, whether or not it was done with that other person's knowledge or approval.
- (3) Any illegal action done by a person as the agent of another person shall, for the purposes of this Act, be treated as done by that other person as well as by the first-mentioned person, unless it is done without that other person's express or implied authority, precedent or subsequent.
- (4) In any proceedings (being proceedings for an offence against this Act) against any person in respect of an illegal action alleged to have been done by an employee of that person, it shall be a defence for that person to prove that he or she or it took such steps as were reasonably practicable to prevent the employee from doing that illegal action, or from doing as an employee of that person acts of a class, category, or description that includes illegal actions.

Compare: 1963 No 22 s 23; 1972 No 136 s 9; 1987 No 85 s 55; 1993 No 28 s 126

### **139 Directors and officers of bodies corporate**

Where any body corporate is convicted of an offence against this Act or any regulations made under 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 that constituted the offence took place with that person's knowledge, authority, permission, or consent.

Compare: 1963 No 22 s 28; 1987 No 85 s 60

### **140 Evidence of publication, etc**

Where, in the case of any prosecution for an offence against this Act or any regulations made under this Act, the publication that is the subject of the prosecution, or any package in which the publication is kept, contains or bears a statement that the publication was supplied, distributed, published, made, or copied by any person, that statement may be received as sufficient evidence of the fact so stated unless the contrary is proved.

Compare: 1963 No 22 s 24; 1987 No 85 s 56

### **141 Relief from contracts**

Notwithstanding anything in any contract, whether entered into before or after the commencement of this section, no person shall be liable for breach of contract by reason only of that person rejecting any publication delivered to that person or of that person refusing to accept delivery of, or deal in, any publication in any case where—

- (a) that person reasonably and in good faith believes that that person's acceptance of delivery of, or that person's possession of or dealing in, that publication may render that person guilty of an offence against this Act; and

- (b) that person gives to the person from whom that person received or is to receive delivery of that publication notice in writing of that person's rejection or refusal of the publication, and of the reason for that rejection or refusal, as soon as practicable after that person becomes aware of the nature of the publication in question.

Compare: 1963 No 22 s 26; 1987 No 85 s 59

#### **141A Offences punishable on conviction on indictment**

*[Repealed]*

Section 141A: repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **142 Offences punishable on summary conviction**

*[Repealed]*

Section 142: repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **143 Time for filing charging document**

- (1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against this Act ends on the date that is 2 years after the date on which the offence was committed.
- (2) This section does not apply to an offence against section 124(1), 127(4), or 131A(1).

Section 143: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **144 Attorney-General's consent required for private prosecutions of certain publications offences**

No private prosecution (as defined in section 5 of the Criminal Procedure Act 2011) for an offence against all or any of the provisions of the following sections can be commenced without the Attorney-General's consent:

- (a) sections 123 to 129 (offences involving objectionable or restricted publications):
- (b) section 131 (offence to possess objectionable publication):
- (c) section 131A (offences relating to possession of objectionable publications and involving knowledge):
- (d) section 133 (contravention of serial publication order):
- (e) section 133A (contravention of interim restriction order).

Section 144: replaced, on 7 May 2015, by section 8 of the Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015 (2015 No 42).

Section 144(d): replaced, on 5 December 2017, by section 10 of the Films, Videos, and Publications Classification (Interim Restriction Orders) Amendment Act 2017 (2017 No 43).

Section 144(e): inserted, on 5 December 2017, by section 10 of the Films, Videos, and Publications Classification (Interim Restriction Orders) Amendment Act 2017 (2017 No 43).

## 145 Delegation of powers by Commissioner of Police

*[Repealed]*

Section 145: repealed, on 7 May 2015, by section 8 of the Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015 (2015 No 42).

## 145A Extraterritorial jurisdiction for certain offences as required by Optional Protocol

(1) In this section and sections 145B and 145C,—

**child pornography** means—

- (a) a representation, by any means, of a person who is or appears to be under 18 years of age engaged in real or simulated explicit sexual activities; or
- (b) a representation of the sexual parts of a person of that kind for primarily sexual purposes

**Optional Protocol** means the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted by the General Assembly of the United Nations at New York on 25 May 2000

**relevant offence** means an offence against—

- (a) section 124(1); or
  - (b) section 127(4); or
  - (c) section 129(3); or
  - (d) section 131A(1); or
  - (e) section 390 of the Customs and Excise Act 2018.
- (2) Even if the acts or omissions alleged to constitute the offence occurred wholly outside New Zealand, proceedings may be brought for a relevant offence that involves child pornography if the person to be charged—
- (a) has been found in New Zealand; and
  - (b) has not been extradited on the grounds that he or she is a New Zealand citizen.
- (3) This section does not affect the application of any section referred to in paragraphs (a) to (e) of the definition of relevant offence in subsection (1) in respect of—
- (a) acts that occurred wholly within New Zealand; or
  - (b) an offence that, under section 7 of the Crimes Act 1961, is deemed to be committed in New Zealand; or
  - (c) acts to which section 8 of that Act applies; or

- (d) acts that, under section 8A of that Act, are deemed to have taken place within New Zealand.

Section 145A: inserted, on 22 February 2005, by section 34(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 145A(1) **relevant offence** paragraph (e): replaced, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

#### **145B Attorney-General's consent required where jurisdiction claimed under section 145A**

- (1) Proceedings for a relevant offence cannot be brought in a New Zealand court against a person without the Attorney-General's consent, if jurisdiction over the person is claimed by virtue of section 145A.
- (2) A person over whom jurisdiction is claimed by virtue of section 145A may be arrested for a relevant offence, or a warrant for the person's arrest for the offence may be issued and executed, and the person may be remanded in custody or on bail, even though the Attorney-General's consent to the bringing of proceedings against the person has not been obtained.

Section 145B: inserted, on 22 February 2005, by section 34(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

#### **145C Offences deemed to be included in extradition treaties**

- (1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act, every relevant offence that involves child pornography is deemed to be an offence described in any extradition treaty—
- (a) concluded before the commencement of section 34 of the Films, Videos, and Publications Classification Amendment Act 2005; and
- (b) for the time being in force between New Zealand and any foreign country that is a party to the Optional Protocol.
- (2) A person whose surrender is sought from New Zealand in respect of an act that amounts to an offence deemed by subsection (1) to be an offence described in an extradition treaty is liable to be surrendered in accordance with the Extradition Act 1999 and the applicable extradition treaty, whether the act occurred before or after the commencement referred to in subsection (1)(a).
- (3) However, subsection (2) does not apply in respect of an act that, had it occurred within the jurisdiction of New Zealand, would not, at the time that it occurred, have constituted an offence under New Zealand law.
- (4) A certificate given and signed by the Minister of Foreign Affairs and Trade that a foreign country is a party to the Optional Protocol is, in the absence of proof to the contrary, sufficient evidence of that fact.
- (5) For the purposes of this section, **child pornography**, **Optional Protocol**, and **relevant offence** have the meanings given to them by section 145A(1), and **foreign country** includes a territory—

- (a) for whose international relations the Government of a foreign country is responsible; and
- (b) to which the extradition treaty and the Optional Protocol extend.

Section 145C: inserted, on 22 February 2005, by section 34(1) of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

## Part 9 Miscellaneous provisions

### *General*

#### **146 Classification Office may require soundtrack to be translated into English**

- (1) Where,—
  - (a) in respect of any film submitted to it under—
    - (i) section 12; or
    - (ii) section 42 by the owner, maker, authorised distributor, or publisher of the film,—

the Classification Office is required, pursuant to section 24, to take into consideration the content of any accompanying soundtrack; and
  - (b) that soundtrack, or part of that soundtrack (other than isolated words or phrases), is not in the English language or the Maori language,—

the Classification Office may—
  - (c) require the person who submitted that film to supply to the Classification Office an English translation, by a translator approved by the Classification Office, of that soundtrack, or part of that soundtrack; or
  - (d) with the consent of the person who submitted that film, arrange for an English translation to be made of that soundtrack, or part of that soundtrack.
- (2) Where the Classification Office arranges for the translation of a soundtrack, or part of a soundtrack, pursuant to subsection (1)(d), the Classification Office may require the person who submitted the film to which that soundtrack relates to meet all or part of the costs of that translation, and such costs shall be recoverable under this section as a debt due to the Classification Office.
- (3) Where, in respect of any film submitted to the Classification Office under section 12 or section 42,—
  - (a) the person who submitted that film is required, pursuant to subsection (1)(c), to supply to the Classification Office an English translation of the soundtrack, or part of the soundtrack, accompanying that film, and that person refuses or fails, within such reasonable period as the Classification Office may allow, to supply that translation; or

- (b) the person who submitted that film is required, pursuant to subsection (2), to meet all or part of the costs of translating the soundtrack, or part of the soundtrack, accompanying that film, and that person refuses or fails, within such reasonable period as the Classification Office may allow, to comply with that requirement,—

the submission of that film to the Classification Office shall be deemed to have been withdrawn, and the Classification Office shall notify the person who submitted that film accordingly.

Compare: 1987 No 85 s 21A; 1990 No 59 s 5

**147 Printed matter to be marked with name and address of publisher or wholesale distributor**

- (1) Except as provided in subsection (4), no person shall publish any printed matter in New Zealand, unless each separate article is printed or stamped with that person's name and address.
- (2) Except as provided in subsection (3) or subsection (4), 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 that person's name and address.
- (3) Nothing in subsection (2) shall apply with respect to—
- (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 chief executive of the responsible department as those of a publisher of books imported by the distributor:
- (b) any magazine, newspaper, or periodical the title of which has been notified by the wholesale distributor to the chief executive of the responsible department as the title of a magazine, newspaper, or periodical imported by the distributor.
- (4) The Minister of Justice may from time to time, by notice in the *Gazette*, grant exemptions from compliance with the provisions of subsection (1) or subsection (2) 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.
- (5) Every person commits an offence and is liable on conviction to a fine not exceeding \$500 who acts in contravention of, or fails to comply with, any provision of this section.

Compare: 1963 No 22 s 27

Section 147(3)(a): amended, on 1 July 1995, pursuant to section 3(1)(b) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 147(3)(b): amended, on 1 July 1995, pursuant to section 3(1)(b) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 147(3)(b): amended, on 27 April 1995, by section 4(4) of the Newspapers and Printers Act Repeal Act 1995 (1995 No 13).

Section 147(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **148 Fees charged by Classification Office to be reasonable**

Any fee charged under section 15(6) or section 38(3) or section 39(6) for a copy of any document shall be no more than is reasonably required to recover the costs of supplying that copy.

Section 148: amended, on 1 October 2012, by section 22(a) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 148: amended, on 1 October 2012, by section 22(b) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

### *Regulations*

#### **149 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 the forms of applications, warrants, and other documents required under this Act:
- (b) prescribing the matters in respect of which fees are payable under this Act; prescribing the amounts of the fees or the method by which they are to be assessed; and prescribing the persons to whom the fees are to be paid:
- (c) exempting or providing for the exemption of any person or class of persons from liability to pay any fees payable under this Act:
- (d) authorising the waiver, refund, or remission, in such circumstances as in accordance with the regulations the Secretary or the Chief Censor or the Board thinks fit, of the whole or any part of any fees payable under this Act:
- (e) prescribing the manner in which any notice or other document required by this Act to be given or served by, or to or on, any person is to be so given or served:
- (f) prescribing the procedures relating to—
  - (i) the examination of films by the labelling body:
  - (ii) the issue of labels in respect of films for the purposes of this Act:
  - (iii) the self-rating process for commercial video on-demand content provided by specified CVoD providers:
- (g) prescribing the kinds of ratings to be assigned to films under this Act:
- (h) prescribing the circumstances in which the labelling body may not assign a rating to a film:
- (ha) prescribing, as contemplated by sections 12(1A) and 71(ba), the circumstances in which, on an application under section 9(1) in respect of the

film, the labelling body may, without a direction of the Classification Office under section 36 in respect of the film, issue a label (containing the classification of, and any description given to, the item) in respect of a film—

- (i) an item on which has been classified under this Act as a restricted publication; and
  - (ii) all other material on which is material to which the labelling body would, in accordance with regulations made under this Act, be permitted to assign a rating:
- (i) prescribing the form and content of labels to be used for the purposes of this Act, and regulating—
- (i) the display of such labels on films that are supplied to the public or offered for supply to the public, and on the cassettes, cases, or other containers in or on which such films are kept:
  - (ii) the public display or advertising, in respect of films exhibited to the public, of the content of such labels:
  - (iii) the display of such labels on, or the inclusion of the content of such labels in, any posters or other advertising material used or intended for use in relation to the advertising of any film to the public:
  - (iv) the display of labels on commercial video on-demand content provided by specified CVoD providers (including labels to be displayed on the content and on menus and catalogues that list the content):
  - (v) the display of labels on advertisements for commercial video on-demand content provided by specified CVoD providers:
- (j) requiring the display, on premises where films are supplied to the public, offered for supply to the public, or exhibited to the public, of posters and advertising material explaining the ratings and classifications assigned to films under this Act:
- (ja) requiring the display, on premises where films to which regulations made under paragraph (nd) apply are supplied to the public or offered for supply to the public, of posters and advertising material explaining the ratings and classifications under the Video Recordings Act 1987, and their equivalent ratings and classifications under this Act:
- (k) prescribing the procedures relating to the examination and approval of film posters by the labelling body and the Classification Office:
- (ka) prescribing factors that must be taken into account when the rating to be applied to commercial video on-demand content is determined by use of an approved self-rating system (*see* section 46F(1)(g)):



- (kb) prescribing information to be included in the film database maintained by the Classification Office under section 11A:
- (l) prescribing information to be included in the register of classification decisions:
- (m) *[Repealed]*
- (n) providing for the dissemination, by the labelling body, of notice of the rating and description (if any) assigned by it to any film, and for the labelling body to charge a reasonable fee for supplying to any person a copy of any such notice:
- (na) prescribing, in relation to—
  - (i) ratings and classifications under the Video Recordings Act 1987; and
  - (ii) classifications under the Films Act 1983,—  
their equivalent ratings and classifications under this Act:
- (nb) providing for the assigning of a rating or a classification to a film in any case where, because decisions have been made in respect of that film under both the Films Act 1983 and the Video Recordings Act 1987, it is not otherwise possible to assign 1 equivalent rating or classification to that film:
- (nc) providing that film posters in respect of which an approval given pursuant to the Films Act 1983 before 1 October 1994 is subsisting at that date are deemed, for the purposes of any regulations made pursuant to paragraph (k), to be approved under any such regulations:
- (nd) providing, in relation to any film in respect of which a decision has been made under the Video Recordings Act 1987, that unless a label has been issued under this Act in respect of the film, compliance with all or any of the requirements of the Video Recordings Act 1987 with respect to the labelling of a video recording is regarded as compliance with all or any of the requirements of this Act with respect to the public supply of that film:
- (o) prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines, not exceeding \$2,000, that may, on conviction, be imposed in respect of any such offences:
- (p) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for their due administration.

Compare: 1983 No 130 s 75; 1987 No 85 s 69; 1990 No 58 s 11; 1990 No 59 s 11

Section 149(f)(iii): inserted, on 10 August 2020, by section 22(1) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 149(ha): inserted, on 22 February 2005, by section 35 of the Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2).

Section 149(i)(i): amended, on 1 October 2012, by section 23(1)(a) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 149(i)(i): amended, on 1 October 2012, by section 23(1)(b) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 149(i)(iii): amended, on 1 October 2012, by section 23(2) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 149(i)(iv): inserted, on 10 August 2020, by section 22(2) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 149(i)(v): inserted, on 10 August 2020, by section 22(2) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 149(ja): inserted, on 24 March 1999, by section 3(1) of the Films, Videos, and Publications Classification Amendment Act 1999 (1999 No 13).

Section 149(ka): inserted, on 10 August 2020, by section 22(3) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 149(kb): inserted, on 10 August 2020, by section 22(3) of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Section 149(l): replaced, on 1 October 2012, by section 23(3) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 149(m): repealed, on 1 October 2012, by section 23(4) of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

Section 149(na): inserted, on 28 July 1997, by section 2 of the Films, Videos, and Publications Classification Amendment Act 1997 (1997 No 44).

Section 149(nb): inserted, on 28 July 1997, by section 2 of the Films, Videos, and Publications Classification Amendment Act 1997 (1997 No 44).

Section 149(nc): inserted, on 28 July 1997, by section 2 of the Films, Videos, and Publications Classification Amendment Act 1997 (1997 No 44).

Section 149(nd): inserted, on 24 March 1999, by section 3(2) of the Films, Videos, and Publications Classification Amendment Act 1999 (1999 No 13).

Section 149(o): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### *Levy on specified CVoD providers*

Heading: inserted, on 10 August 2020, by section 23 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **149A Payment of annual levy by specified CVoD provider**

- (1) A specified CVoD provider must pay to the Classification Office an annual levy prescribed by, or calculated in accordance with, regulations made under section 149B.
- (2) The levy is payable to the Classification Office to fund the costs of its activities in support of the purpose of Part 3A.
- (3) A provider must pay the levy for each financial year beginning on 1 July (or part of the year) during which the provider is listed in Schedule 4.

- (4) In respect of a financial year beginning on 1 July, a provider must pay the levy on or before the later of the following:
- (a) the 28th day after an invoice is sent; or
  - (b) 31 July of that financial year.

Section 149A: inserted, on 10 August 2020, by section 23 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **149B Levy regulations**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations, for the levy that is payable under section 149A,—
- (a) prescribing the amount or rate of the levy or prescribing the methods of calculating or ascertaining amounts or rates of the levy; and
  - (b) requiring the waiver, refund, or remission of the whole or any part of a levy in circumstances prescribed in the regulations; and
  - (c) providing for the Chief Censor to waive, refund, or remit the whole or any part of a levy in such circumstances as (in accordance with the regulations) the Chief Censor thinks fit; and
  - (d) providing for any circumstances in which, and conditions subject to which, providers may be allowed extensions of time for the payment of a levy; and
  - (e) imposing the addition of penalties, not exceeding 10% of the unpaid amount, to a levy that is not paid in full by the due date.
- (2) Regulations in force on 31 May apply to the next financial year beginning on 1 July.
- (3) A levy imposed by regulations made under this section must be reasonable, having regard to—
- (a) the costs projected to be incurred by the Classification Office carrying out its activities in support of the purpose of Part 3A; and
  - (b) the amount of any income that could be applied to meet those costs and that is projected to be received by the Classification Office from any other source.
- (4) The regulations may prescribe the amount or rate of the levy, or prescribe the methods of calculating or ascertaining amounts or rates of the levy,—
- (a) on a uniform basis; or
  - (b) on any differential basis.
- (5) Before recommending that regulations be made under this section, the Minister must be satisfied that—
- (a) the Secretary has taken reasonable steps to consult each specified CVoD provider in relation to the proposed levy; and

- (b) if the levy is set on a differential basis, the levy required from different providers is fair having regard to the risk of harm to viewers from commercial video on-demand content made available by different providers (for example, having regard to the market presence of different providers and the nature of the content made available by different providers).
- (6) An order made under subsection (1) is a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 149B: inserted, on 10 August 2020, by section 23 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **149C Dispute does not suspend obligation to pay levy**

A dispute about the validity of a levy or the provider's liability to pay a levy does not suspend—

- (a) the obligation of the provider to pay the levy; or
- (b) the right of the Classification Office to receive and recover the levy (or act under section 149D or 149E).

Section 149C: inserted, on 10 August 2020, by section 23 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **149D Approval may be suspended until debt paid**

- (1) If a specified CVoD provider fails to pay by the due date any levy payable under section 149A, the Chief Censor may suspend any approval of a self-rating system used by the provider.
- (2) The Chief Censor must give the provider written notice of the Chief Censor's intention to act under subsection (1) (including the reason) at least 10 working days before the Chief Censor acts.
- (3) If an approval is suspended under this section, during the period of suspension, the system to which the approval relates is not an approved self-rating system.

Compare: 1949 No 19 s 67ZR; 1997 No 100 s 16(1), (2)

Section 149D: inserted, on 10 August 2020, by section 23 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### *Status and recovery of fees or levy*

Heading: inserted, on 10 August 2020, by section 23 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **149E Status and recovery of fees or levy**

Outstanding amounts of fees or levy payable to the Classification Office under this Act constitute a debt due to the Office, and the Office may issue legal proceedings for recovery of the debt from the provider in a court of competent jurisdiction.

Section 149E: inserted, on 10 August 2020, by section 23 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

*Consequential amendments, repeals, and revocation*

**150 Consequential amendments, repeals, and revocation**

- (1) The enactments specified in Schedule 2 are hereby amended in the manner indicated in that schedule.
- (2) The enactments specified in Schedule 3 are hereby repealed.
- (3) The Films Order 1986 (SR 1986/116) is hereby consequentially revoked.

**150A Amendment of Schedule 4 by Order in Council**

- (1) The Governor-General, by Order in Council made on the recommendation of the Minister, may amend Schedule 4 by—
  - (a) adding the name of any person; or
  - (b) deleting the name of any person.
- (2) The Minister must not recommend that an order be made under subsection (1)(a) unless—
  - (a) the Minister has consulted the Chief Censor on the proposal that the order be made; and
  - (b) the Minister is satisfied, on reasonable grounds, that adding the name of the person will reduce the risk of harm to viewers of commercial video on-demand content.
- (3) The Minister must not recommend that an order be made under subsection (1)(b) unless—
  - (a) the Minister has consulted the Chief Censor on the proposal that the order be made; and
  - (b) the Minister is satisfied, on reasonable grounds, that deleting the name of the person will not materially increase the risk of harm to viewers of commercial video on-demand content.
- (4) For the purposes of subsections (2)(b) and (3)(b), the Minister—
  - (a) must consider—
    - (i) available evidence of the current or likely extent of public subscriptions to, or use of, commercial video on-demand services and products provided by the person; and
    - (ii) available evidence of the nature of the commercial video on-demand content made available, or intended to be made available, by the person and the potential of that content to cause harm; and
    - (iii) available evidence of the person's commitment to a classification framework recognised in New Zealand as being effective in ensuring that persons in New Zealand who are likely to be harmed by viewing the commercial video on-demand content are warned of

the nature of that content by means of clear and consistent labelling; and

- (b) may consider any other factors that the Minister thinks relevant.
- (5) An order under subsection (1)(a) must not come into force earlier than 3 months after the date on which it is published.
- (6) An order made under subsection (1) is a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 150A: inserted, on 10 August 2020, by section 8 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

## Part 10 Transitional provisions

### *Indecent Publications Act 1963*

#### 151 Interpretation

In sections 152 to 159, unless the context otherwise requires,—

**book** has the same meaning as it has in the Indecent Publications Act 1963

**Tribunal** means the Indecent Publications Tribunal constituted under the Indecent Publications Act 1963.

#### 152 Decisions under Indecent Publications Act 1963

- (1) This section applies to every decision made under the Indecent Publications Act 1963 by the Tribunal or the High Court upon any book or sound recording and that, immediately before the commencement of this section, is (subject to sections 18(2) and 20 of that Act) conclusive evidence in any proceedings (other than proceedings under section 19 of that Act) of the classification or character of that book or sound recording.
- (2) Subject to this section and to section 155, every decision to which this section applies shall be deemed for the purposes of sections 41 and 42 to be a decision made under section 23 by the Classification Office on the date of the making of that decision under the Indecent Publications Act 1963, and for those purposes the book or sound recording to which the decision relates shall be deemed to have the classification that corresponds as near as may be to the classification or character assigned to it by that decision under that Act.
- (3) For the purposes of section 39, where notice of a decision to which this section applies has been published in the *Gazette*, that decision shall be deemed to have been entered in, and to form part of, the register.
- (4) For the purposes of the application of sections 41 and 42 to any decision to which this section applies, sections 41(2), 42(1), and 42(2) shall be read as if,

for the words “entered in the register” as they appear in each of those provisions, there were substituted in each case the word “made”.

- (5) Subject to section 155, where, in respect of a decision to which this section applies (being a decision of the Tribunal), the period of 28 days referred to in section 19(1) of the Indecent Publications Act 1963 within which any party to the proceedings before the Tribunal is entitled to appeal to the High Court against that decision has not, at the date of the commencement of this section, expired, and no such appeal has been lodged before that date,—
- (a) there shall be no right of appeal under that Act against that decision; but
  - (b) any party to those proceedings may, within 30 working days after that date, apply under section 47 to have the book or sound recording to which the decision relates reviewed by the Board, and the provisions of this Act shall apply accordingly with all necessary modifications.
- (6) Notwithstanding that a decision to which this section applies is deemed to be a decision of the Classification Office, but subject to subsection (5), nothing in subsection (2) shall be construed so as to entitle any person to make an application under section 47 in relation to the book or sound recording to which the decision relates.

Section 152(4): amended, on 1 October 2012, by section 24 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

### **153 Proceedings pending or in train before Indecent Publications Tribunal**

- (1) Subject to section 155, this section applies where, before the commencement of this section,—
- (a) a book or sound recording has been submitted to the Tribunal under section 14 or section 20 of the Indecent Publications Act 1963; or
  - (b) under section 19A of that Act, the High Court has referred a matter back to the Tribunal for reconsideration,—
- and those proceedings are pending before the Tribunal at the commencement of this section.
- (2) Where this section applies, and the proceedings have not commenced, the following provisions shall apply:
- (a) the Tribunal shall refer the matter to the Classification Office:
  - (b) the Classification Office shall deal with the matter as if the book or sound recording had been submitted to the Classification Office under section 13, and the provisions of this Act (including Parts 4 and 5) shall apply accordingly with all necessary modifications.
- (3) Where this section applies, and the proceedings have commenced, the following provisions shall apply:
- (a) the proceedings shall continue as if this Act had not been passed:

- (b) section 152 shall apply in respect of the decision of the Tribunal as if it were a decision to which that section applied:
- (c) except where the decision of the Tribunal is made on a matter that has been referred back to it by the High Court under section 19A of the Indecent Publications Act 1963, section 47 shall apply in respect of the decision of the Tribunal as if it were a decision of the Classification Office, and the provisions of this Act shall apply accordingly with all necessary modifications.

#### **154 Proceedings pending or in train before High Court**

Subject to section 155, where, at the commencement of this section, any proceedings under section 19 or section 20(2) of the Indecent Publications Act 1963 are pending before the High Court, the following provisions shall apply:

- (a) the proceedings shall continue as if this Act had not been passed:
- (b) if, in the case of an appeal under section 19 of the Indecent Publications Act 1963, the High Court decides that the matter ought to be referred back to the Tribunal pursuant to section 19A of that Act, the court shall, instead of exercising that power, refer the matter to the Classification Office, and in any such case—
  - (i) the Classification Office shall deal with the matter as if the book or sound recording to which the appeal relates had been submitted to the Classification Office under section 13, and the provisions of this Act (including Parts 4 and 5) shall apply accordingly with all necessary modifications; and
  - (ii) the proceedings before the High Court shall be deemed to be finally determined by virtue of this section:
- (c) subject to paragraph (b), section 152 shall apply in respect of the decision of the High Court as if it were a decision to which that section applied.

#### **155 Question of indecency arising in court proceedings**

- (1) Notwithstanding anything in sections 152 to 154, this section applies in the following cases:
  - (a) where, before the commencement of this section, a book or sound recording has been referred to the Tribunal under section 12 or section 18(2) of the Indecent Publications Act 1963, and, at the commencement of this section,—
    - (i) those proceedings are pending before the Tribunal; or
    - (ii) the Tribunal has made a decision in those proceedings but the period of 28 days referred to in section 19(1) of the Indecent Publications Act 1963 within which any party to the proceedings before the Tribunal is entitled to appeal to the High Court against



- that decision has not expired, and no such appeal has been lodged;  
or
- (iii) an appeal to the High Court against the decision of the Tribunal in respect of that referral is pending:
  - (b) where, before the commencement of this section, a book or sound recording has been referred to the High Court under section 18(2) of the Indecent Publications Act 1963, and, at the commencement of this section, those proceedings are pending before that court:
  - (c) where, before the date of the commencement of this section, the question referred to in subsection (1) of section 12 of the Indecent Publications Act 1963 has arisen in any civil or criminal proceedings and, by virtue of that section, that question would, before that date, have been required to be referred to the Tribunal for decision and report but has not been so referred before that date:
  - (d) where, on or after the date of the commencement of this section, the question referred to in subsection (1) of section 12 of the Indecent Publications Act 1963 arises in any civil or criminal proceedings (including proceedings for an offence against that Act or proceedings under the Customs Act 1966) and, by virtue of that section, that question would, before that date, have been required to be referred to the Tribunal for decision and report.
- (2) Where this section applies, the following provisions shall apply:
- (a) the provisions of the Indecent Publications Act 1963 (including those provisions that confer a right of appeal to the High Court against a decision of the Tribunal) shall continue and be in force for the purposes of dealing with the matter, as if this Act had not been passed:
  - (b) except where a classification has been given to the book or sound recording under this Act, section 152 shall apply in respect of the decision of the Tribunal or, as the case may be, the High Court on the matter as if it were a decision to which that section applied.
- (3) Nothing in subsection (2)(b) shall apply in respect of a decision of the Tribunal in any case where that decision is superseded by a decision of the High Court on an appeal against the Tribunal's decision.

### **156 Alteration of appeal period**

Notwithstanding anything in any of sections 152 to 155, where, by virtue of any of those sections, any right of appeal to the High Court under section 19 of the Indecent Publications Act 1963 against a decision of the Tribunal is preserved for the benefit of, or conferred on, any person, then, for the purposes of any such appeal (other than an appeal that has been lodged before the commencement of this section), subsection (1) of that section shall be read as if the

words “or within such further period as the High Court may allow” were omitted.

### **157 Interim restriction orders to lapse**

In any case where, under section 153 or section 154, any matter is required to be transferred to the Classification Office, any interim restriction order made under section 14A of the Indecent Publications Act 1963 by the Tribunal in respect of that matter shall, unless sooner revoked, lapse on the date of that transfer.

### **158 Restriction orders deemed to be serial publication orders**

Every restriction order made under section 15A of the Indecent Publications Act 1963 that is in force immediately before the date of the commencement of this section—

- (a) shall be deemed to be a serial publication order made under section 37 on terms that correspond as near as may be to the terms of the order immediately before that date; and
- (b) unless it is sooner revoked under this Act, shall expire on the date on which the order would have expired if this Act had not been passed.

### **159 Exemptions**

(1) Every exemption granted under section 31 of the Indecent Publications Act 1963 that is in force immediately before the date of the commencement of this section—

- (a) shall be deemed to be an exemption granted under section 44 on terms that correspond as near as may be to the terms of the exemption immediately before that date; and
- (b) shall expire on the date on which the exemption would have expired if this Act had not been passed.

(2) Where—

- (a) before the commencement of this section, an application has been made to the Minister of Justice for an exemption under section 31 of the Indecent Publications Act 1963 in respect of any publication; and
- (b) at the date of the commencement of this section, that application is still subsisting and has not been finally determined,—

that application shall be deemed to have lapsed on that date, but without prejudice to the right of the applicant to make an application under section 44 in respect of that publication.

*Video Recordings Act 1987*

**160 Interpretation**

In sections 161 to 166, unless the context otherwise requires,—

**Authority** means the Video Recordings Authority established by section 16 of the Video Recordings Act 1987

**Video Recordings Board of Review** means the Video Recordings Board of Review established by section 31 of the Video Recordings Act 1987.

**161 Classification decisions under Video Recordings Act 1987**

- (1) This section applies to every decision made under the Video Recordings Act 1987 by the Authority or the Video Recordings Board of Review in respect of any video recording and that, immediately before the commencement of this section, is (subject to sections 29(2), 30, 36, and 41 of that Act) conclusive evidence in any proceedings of the classification or character of that video recording.
- (2) Subject to this section and to sections 164 and 171, every decision to which this section applies shall be deemed for the purposes of sections 41 and 42 to be a decision made under section 23 by the Classification Office on the date of the making of that decision under the Video Recordings Act 1987.
- (3) For the purposes of subsection (2), a decision to which this section applies shall,—
  - (a) if the decision is that a video recording is not indecent, be deemed to be a decision that the video recording is unrestricted:
  - (b) if the decision is that a video recording is a restricted video recording within the meaning of the Video Recordings Act 1987, be deemed to be a decision that the video recording is a restricted video recording under this Act, with such classification as is determined in accordance with regulations made under this Act:
  - (c) if the decision is that a video recording is indecent, be deemed to be a decision that the video recording is objectionable.
- (4) For the purposes of section 39, every decision to which this section applies shall be deemed to have been entered in, and to form part of, the register.
- (5) For the purposes of the application of sections 41 and 42 to any decision to which this section applies, sections 41(2), 42(1), and 42(2) shall be read as if, for the words “entered in the register” as they appear in each of those provisions, there were substituted in each case the word “made”.
- (6) Subject to section 164, where, in respect of a decision to which this section applies (being a decision of the Authority), the period of 30 days prescribed by section 37(1)(b) of the Video Recordings Act 1987 within which an application may be made under section 36 of that Act to the Video Recordings Board of

Review in respect of the video recording has not, at the date of the commencement of this section, expired, and no such application has been lodged before that date,—

- (a) there shall be no right to lodge an application under that section in respect of that video recording; but
  - (b) any person who would have been entitled to lodge an application under that section in respect of that video recording may, within 30 working days after that date, apply under section 47 to have the video recording to which the decision relates reviewed by the Board, and the provisions of this Act shall apply accordingly with all necessary modifications.
- (7) Notwithstanding that a decision to which this section applies is deemed to be a decision of the Classification Office, but subject to subsection (6), nothing in subsection (2) shall be construed so as to entitle any person to make an application under section 47 in relation to the video recording to which the decision relates.

Section 161(5): amended, on 1 October 2012, by section 25 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

## **162 Videos before labelling body**

Where, before the commencement of this section, an application has been made under section 12 of the Video Recordings Act 1987 for the issue of a label in respect of any video recording and, at the commencement of this section, the labelling body under that Act has not issued a label under section 13 of that Act in respect of that video recording,—

- (a) the application shall be determined under this Act as if it were an application made under section 9; and
- (b) the labelling body under the Video Recordings Act 1987 shall forthwith forward to the labelling body under this Act all material in its possession that relates to the application.

## **163 Proceedings pending before Authority or Board of Review**

- (1) Subject to section 164, this section applies where, before the commencement of this section,—
- (a) a video recording has been submitted to the Authority under section 15 or section 19 or section 30 of the Video Recordings Act 1987; or
  - (b) an application has been made under section 36 of the Video Recordings Act 1987 for the review, by the Video Recordings Board of Review, of a video recording,—

and, at the commencement of this section, that submission or, as the case may be, that application is pending before the Authority or, as the case may be, the Video Recordings Board of Review.

- (2) Where this section applies, the following provisions shall apply:

- (a) the Authority or, as the case requires, the Video Recordings Board of Review shall refer the matter to the Classification Office:
- (b) the Classification Office shall deal with the matter as if the video recording had been submitted to the Classification Office under section 13, and the provisions of this Act (including Parts 4 and 5) shall apply accordingly with all necessary modifications:
- (c) the Authority or, as the case requires, the Video Recordings Board of Review shall forthwith forward to the Classification Office all material in its possession that relates to the matter.

#### **164 Question of indecency arising in court proceedings**

- (1) Notwithstanding anything in sections 161 to 163, this section applies in the following cases:
  - (a) where, before the commencement of this section, a video recording has been referred to the Authority under section 20 or section 29(3) of the Video Recordings Act 1987, and, at the commencement of this section,—
    - (i) those proceedings are pending before the Authority; or
    - (ii) the Authority has made a decision in those proceedings but the period of 30 days prescribed by section 37(1)(b) of the Video Recordings Act 1987 within which an application may be made under section 36 of that Act to the Video Recordings Board of Review in respect of the video recording has not expired, and no such application has been lodged; or
    - (iii) an application under section 36 of that Act in respect of that video recording is pending:
  - (b) where, before the commencement of this section, a video recording has been referred to the Video Recordings Board of Review under section 29(3) of the Video Recordings Act 1987, and, at the commencement of this section, those proceedings are pending before that Board:
  - (c) where, before the date of the commencement of this section, the question referred to in subsection (1) of section 20 of the Video Recordings Act 1987 has arisen in any civil or criminal proceedings and, by virtue of that section, that question would, before that date, have been required to be referred to the Authority for decision but has not been so referred before that date:
  - (d) where, on or after the date of the commencement of this section, the question referred to in subsection (1) of section 20 of the Video Recordings Act 1987 arises in any civil or criminal proceedings (including proceedings for an offence against that Act or proceedings under the Customs Act 1966) and, by virtue of that section, that question would,

before that date, have been required to be referred to the Authority for decision.

- (2) Where this section applies, the following provisions shall apply:
  - (a) the provisions of the Video Recordings Act 1987 (including Parts 3 and 4) shall continue and be in force for the purposes of dealing with the matter, as if this Act had not been passed:
  - (b) except where a classification has been given to the video recording under this Act, section 161 shall apply in respect of the decision of the Authority or, as the case may be, the Video Recordings Board of Review on the matter as if it were a decision to which that section applied.
- (3) Nothing in subsection (2)(b) shall apply in respect of a decision of the Authority in any case where that decision is superseded by a decision of the Video Recordings Board of Review in accordance with section 38(10) of the Video Recordings Act 1987.

#### **165 Proceedings before High Court or Court of Appeal**

For the avoidance of doubt, it is hereby declared that section 22 of the Acts Interpretation Act 1924 applies in respect of any proceedings under Part 4 of the Video Recordings Act 1987 that are pending before the High Court or the Court of Appeal at the commencement of this section.

#### **166 Exemptions**

- (1) Every exemption granted under section 64 of the Video Recordings Act 1987 that is in force immediately before the date of the commencement of this section—
  - (a) shall be deemed to be an exemption granted under section 44 on terms that correspond as near as may be to the terms of the exemption immediately before that date; and
  - (b) shall expire on the date on which the exemption would have expired if this Act had not been passed.
- (2) Where,—
  - (a) before the commencement of this section, an application has been made to the Minister for an exemption under section 64 of the Video Recordings Act 1987 in respect of any publication; and
  - (b) at the date of the commencement of this section, that application is still subsisting and has not been finally determined,—

that application shall be deemed to have lapsed on that date, but without prejudice to the right of the applicant to make an application under section 44 in respect of that publication.

*Films Act 1983*

**167 Interpretation**

In sections 168 to 170, unless the context otherwise requires,—

**Chief Censor** means the Chief Censor of Films under the Films Act 1983

**Films Censorship Board of Review** means the Films Censorship Board of Review established by section 25 of the Films Act 1983.

**168 Classification decisions under Films Act 1983**

- (1) This section applies to every decision made under the Films Act 1983 by the Chief Censor or the Films Censorship Board of Review approving a film for exhibition or refusing to approve a film for exhibition, where that decision is subsisting immediately before the commencement of this section.
- (2) Subject to this section and to section 171, every decision to which this section applies shall be deemed for the purposes of sections 41 and 42 to be a decision made under section 23 by the Classification Office on the date of the making of that decision under the Films Act 1983.
- (3) For the purposes of subsection (2), a decision to which this section applies shall,—
  - (a) if the decision approves a film for exhibition, be deemed to be a decision according the film such classification as is determined in accordance with regulations made under this Act;
  - (b) if the decision refuses to approve a film for exhibition, be deemed to be a decision that the film is objectionable.
- (4) For the purposes of section 39, every decision to which this section applies shall be deemed to have been entered in, and to form part of, the register.
- (5) For the purposes of the application of sections 41 and 42 to any decision to which this section applies, sections 41(2), 42(1), and 42(2) shall be read as if, for the words “entered in the register” as they appear in each of those provisions, there were substituted in each case the word “made”.
- (6) Where, in respect of a decision to which this section applies (being a decision of the Chief Censor), the period of 30 days prescribed by section 31(1)(a) of the Films Act 1983 within which an application may be made under section 30 of that Act to the Films Censorship Board of Review in respect of the film has not, at the date of the commencement of this section, expired, and no such application has been lodged before that date,—
  - (a) there shall be no right to lodge an application under that section in respect of that film; but
  - (b) any person who would have been entitled to lodge an application under that section in respect of that film may, within 30 working days after that date, apply under section 47 to have the film to which the decision

relates reviewed by the Board, and the provisions of this Act shall apply accordingly with all necessary modifications.

- (7) Notwithstanding that a decision to which this section applies is deemed to be a decision of the Classification Office, but subject to subsection (6), nothing in subsection (2) shall be construed so as to entitle any person to make an application under section 47 in relation to the film to which the decision relates.
- (8) Nothing in this section applies in respect of a decision of the Chief Censor under section 17 of the Films Act 1983.

Section 168(5): amended, on 1 October 2012, by section 26 of the Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62).

### **169 Proceedings pending before Chief Censor or Board of Review**

- (1) This section applies where, before the commencement of this section,—
- (a) an application has been made to the Chief Censor under section 8 of the Films Act 1983 in respect of a film; or
  - (b) an application has been lodged under section 31 or section 34 of the Films Act 1983 for the review or, as the case requires, the examination, by the Films Censorship Board of Review, of a film,—

and, at the commencement of this section, that application is pending before the Chief Censor or, as the case may be, the Films Censorship Board of Review.

- (2) Where this section applies, the following provisions shall apply:
- (a) the Chief Censor or, as the case requires, the Films Censorship Board of Review shall refer the matter to the Classification Office:
  - (b) the Classification Office shall deal with the matter as if the film had been submitted to the Classification Office under section 13, and the provisions of this Act (including Parts 4 and 5) shall apply accordingly with all necessary modifications:
  - (c) the Chief Censor or, as the case requires, the Films Censorship Board of Review shall forthwith forward to the Classification Office all material in its possession that relates to the matter.

### **170 Proceedings before High Court or Court of Appeal**

For the avoidance of doubt, it is hereby declared that section 22 of the Acts Interpretation Act 1924 applies in respect of any proceedings under Part 3 of the Films Act 1983 that are pending before the High Court or the Court of Appeal at the commencement of this section.



*Dual censorship decisions*

**171 Dual censorship decisions**

- (1) This section applies where, in respect of any film, the application of the provisions of this Part would result in that film receiving a classification under this Act both—
  - (a) by virtue of a decision made in respect of that film under the Video Recordings Act 1987; and
  - (b) by virtue of a decision made in respect of that film under the Films Act 1983.
- (2) Where—
  - (a) this section applies; and
  - (b) by virtue of those decisions under those enactments, the film would receive the same classification or different classifications; and
  - (c) the decisions under those enactments were made on different dates,—

then, notwithstanding anything to the contrary in this Part, for the purposes of section 42, the film shall be deemed in accordance with this Part to have been classified by the Classification Office on the earlier of those dates, and the later date shall be disregarded for that purpose.
- (3) Where this section applies, and, by virtue of those decisions under those enactments, the film would receive different classifications, the following provisions shall apply:
  - (a) if either decision would result in the film being deemed in accordance with this Part to have been classified by the Classification Office as objectionable, then,—
    - (i) notwithstanding anything in this Part, the film shall be deemed (in accordance with the relevant provision of this Part) to have been so classified, and, subject to subparagraph (ii), the decision that would result in that film receiving a different classification (in this paragraph referred to as the **other decision**) shall be disregarded for the purposes of this Part; but
    - (ii) notwithstanding anything in this Act or in any other enactment, no person who, at any time before the classification of that film (as so deemed) is reconsidered in accordance with the provisions of this Act, does anything in relation to that film for any purpose related to the public exhibition of that film (in any case where the other decision is a decision under the Films Act 1983) or for any purpose related to the public supply of that film (in any case where the other decision is a decision under the Video Recordings Act 1987) commits an offence against this Act or any other enactment if what that person does is in accordance with the classifica-

- tion that the film would have been deemed to have had in accordance with this Part (in this subparagraph referred to as the **alternative classification**) if the other decision had been the only decision determining the classification of that film in accordance with this Part, and that person otherwise complies with the requirements of this Act as they relate to the alternative classification:
- (b) if both decisions would result in the film being deemed in accordance with this Part to have been classified by the Classification Office as a restricted publication, then,—
- (i) notwithstanding anything in this Part, the film shall be deemed (in accordance with the relevant provision of this Part) to have been so classified, and to have the more restrictive of the 2 classifications, and, subject to subparagraph (ii), the decision that would result in that film receiving a less restrictive classification (in this paragraph referred to as the **other decision**) shall be disregarded for the purposes of this Part; but
  - (ii) notwithstanding anything in this Act or in any other enactment, no person who, at any time before the classification of that film (as so deemed) is reconsidered in accordance with the provisions of this Act, does anything in relation to that film for any purpose related to the public exhibition of that film (in any case where the other decision is a decision under the Films Act 1983) or for any purpose related to the public supply of that film (in any case where the other decision is a decision under the Video Recordings Act 1987) commits an offence against this Act or any other enactment if what that person does is in accordance with the classification that the film would have been deemed to have had in accordance with this Part (in this subparagraph referred to as the **alternative classification**) if the other decision had been the only decision determining the classification of that film in accordance with this Part, and that person otherwise complies with the requirements of this Act as they relate to the alternative classification:
- (c) if one decision would result in the film being deemed in accordance with this Part to have been classified by the Classification Office as a restricted publication, and the other decision would result in the film being deemed to have been classified as unrestricted, then,—
- (i) notwithstanding anything in this Part, the film shall be deemed (in accordance with the relevant provision of this Part) to have been classified as a restricted publication, and, subject to subparagraph (ii), the decision that would result in that film receiving a different classification (in this paragraph referred to as the **other decision**) shall be disregarded for the purposes of this Part; but

- (ii) notwithstanding anything in this Act or in any other enactment, no person who, at any time before the classification of that film (as so deemed) is reconsidered in accordance with the provisions of this Act, does anything in relation to that film for any purpose related to the public exhibition of that film (in any case where the other decision is a decision under the Films Act 1983) or for any purpose related to the public supply of that film (in any case where the other decision is a decision under the Video Recordings Act 1987) commits an offence against this Act or any other enactment if what that person does is in accordance with the classification that the film would have been deemed to have had in accordance with this Part (in this subparagraph referred to as the **alternative classification**) if the other decision had been the only decision determining the classification of that film in accordance with this Part, and that person otherwise complies with the requirements of this Act as they relate to the alternative classification:
- (d) notwithstanding anything in this Part, for as long as the decision classifying that film is deemed in accordance with this Part to be a decision of the Classification Office, nothing in section 41 shall apply in respect of that decision (as so deemed).

#### *Miscellaneous provisions*

### **172 Vacation of office of existing office-holders**

Subject to section 173, for the avoidance of doubt, it is hereby declared that no person who, immediately before the commencement of this section, is holding any office by virtue of any appointment made under, or pursuant to, or for the purposes of, the Indecent Publications Act 1963 or the Films Act 1983 or the Video Recordings Act 1987 shall, by virtue of the operation of any provision of the Interpretation Act 1999 or any other enactment or rule of law, be taken to hold any office under this Act as a member or employee of the Classification Office or as a member of the Board.

Section 172: amended, on 1 November 1999, pursuant to section 38(1) of the Interpretation Act 1999 (1999 No 85).

### **173 Existing Inspectors deemed to be Inspectors**

Notwithstanding section 103, every person who, immediately before the commencement of this section, held appointment as an Inspector of Cinemas under section 67 of the Films Act 1983 or as an Inspector of Video Recording Outlets under section 66 of the Video Recordings Act 1987 shall, on the commencement of this section, be deemed to have been appointed,—

- (a) where, immediately before the commencement of this section, that person was an employee of the Department of Internal Affairs, as an Inspector of Publications under section 103(1):

- (b) in any other case, as an Inspector of Publications under section 103(2).

#### **174 Restrictions on redundancy and other entitlements**

Where—

- (a) any employee of the Department of Internal Affairs ceases to be employed by that department; and
- (b) on or before the date on which that employment so ceases, that employee receives an offer of employment in the Classification Office, being an offer of employment on terms and conditions that, taken as a whole, are substantially similar to, or better than, the terms and conditions of employment applying to that person immediately before that date,—

then, notwithstanding the terms of that employee's contract of service with the Department of Internal Affairs, that employee shall not be entitled to receive any payment or other benefit from that department by reason only of that person so ceasing to be an employee of that department, whether or not that person accepts that offer of employment in the Classification Office.

Compare: 1993 No 23 s 13(1)

#### **175 Part to apply in respect of subsisting decisions under previous Films Acts**

Where, at the commencement of this section, any decision made under the Cinematograph Films Act 1976 or any former corresponding Act (being a decision that, by virtue of the provisions of the Interpretation Act 1999, is treated for the purposes of the Films Act 1983 to be a decision approving a film for exhibition or refusing to approve a film for exhibition) is subsisting, this Part, so far as applicable and with all necessary modifications, shall apply in respect of that decision as if it were a decision made under the Films Act 1983.

Section 175: amended, on 1 November 1999, pursuant to section 38(1) of the Interpretation Act 1999 (1999 No 85).

### *Regulations*

#### **176 Regulations relating to transitional matters**

*[Expired]*

Section 176: expired and deemed to have been repealed, on 1 April 1999, by section 177.

#### **177 Expiry of section 176**

Section 176 shall expire with the close of 31 March 1999, and on 1 April 1999—

- (a) section 176 shall be deemed to have been repealed; and
- (b) any regulations made under section 149 pursuant to any power conferred by section 176 shall be deemed to have been revoked.

## **Schedule 1AA**

### **Transitional, savings, and related provisions**

s 4A

Schedule 1AA: inserted, on 10 August 2020, by section 9 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **Part 1**

### **Provisions relating to Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020**

Schedule 1AA Part 1: inserted, on 10 August 2020, by section 9 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **1 Content classified under broadcasting code before 10 August 2020**

- (1) If, before 10 August 2020, a specified CVoD provider classified commercial video on-demand content in accordance with a code of broadcasting practice issued or approved by the Broadcasting Standards Authority under section 21(1) of the Broadcasting Act 1989, the specified CVoD provider is not required to issue a label for that content under section 46C(1).
- (2) If subclause (1) applies, section 46C(2) applies as if the classification referred to in subclause (1), and any associated advisory or warning material, were a label issued under this Act.
- (3) Nothing in this clause affects the obligations of any other specified CVoD provider in relation to labelling the same content.

Schedule 1AA clause 1: inserted, on 10 August 2020, by section 9 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **2 Time when labelling requirements commence**

For the purposes of clauses 3 and 4, the labelling requirements commence when section 46C (as inserted by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020) comes into force.

Schedule 1AA clause 2: inserted, on 10 August 2020, by section 9 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **3 Other commercial video on-demand content made available before labelling requirements commence**

- (1) This clause applies to commercial video on-demand content made available in New Zealand by a specified CVoD provider before the labelling requirements commence without—
  - (a) a label issued under this Act; or

- (b) a classification determined in accordance with a code of broadcasting practice issued or approved by the Broadcasting Standards Authority under section 21(1) of the Broadcasting Act 1989.
- (2) The requirements in sections 6 and 46C to rate and label commercial video on-demand content do not apply to commercial video on-demand content referred to in subclause (1) until 6 months after the labelling requirements commence.
- (3) However, despite subclause (2), the Chief Censor may require a specified CVoD provider to issue a label in respect of commercial video on-demand content referred to in subclause (1) before the date referred to in subclause (2).

Schedule 1AA clause 3: inserted, on 10 August 2020, by section 9 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

#### **4 Approval of providers' self-rating systems before labelling requirements commence**

- (1) Before the labelling requirements commence,—
  - (a) a specified CVoD provider may apply to the Chief Censor for approval of a system to be used to rate and label the provider's commercial video on-demand content; and
  - (b) the Chief Censor may approve the self-rating system for use by the provider if the Chief Censor is satisfied that use of the system will enable the provider to meet the requirements of section 46F (as inserted by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020) when that section commences.
- (2) The Chief Censor may approve a self-rating system for use by a provider subject to any terms and conditions that the Chief Censor considers are necessary for the purposes of subclause (1)(b).
- (3) If regulations have been made that prescribe the information that must be contained in an application for approval of a self-rating system under section 46G, or the fee that is payable when making an application, the application under subclause (1)(a) must contain the information and be accompanied by the fee.
- (4) An approval given in accordance with this clause must be treated as an approval under section 46G (as inserted by section 7 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020) from the date on which that section comes into force.

Schedule 1AA clause 4: inserted, on 10 August 2020, by section 9 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

## Schedule 1

### Provisions applying in respect of Classification Office

s 90

#### 1 Employment of experts

*[Repealed]*

Schedule 1 clause 1: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 2 Staff

- (1) Subject to the provisions of this clause, the Chief Censor may appoint such employees as may be necessary for the efficient carrying out of the Classification Office's functions, powers, and duties under this Act (including the functions of the Information Unit).

- (2) This clause is subject to sections 116 and 118 of the Crown Entities Act 2004.

- (3) *[Repealed]*

- (4) *[Repealed]*

Schedule 1 clause 2(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 1 clause 2(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 1 clause 2(4): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 3 Complaints officers

For the purposes of section 16, the Chief Censor shall, from time to time, designate as complaints officers 1 or more of the persons appointed pursuant to clause 2.

#### 4 Salaries and allowances

*[Repealed]*

Schedule 1 clause 4: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### 5 Superannuation or retiring allowances

- (1) For the purpose of providing superannuation or retiring allowances for the Chief Censor or the Deputy Chief Censor, the Classification Office may, out of the funds of the Classification Office, make payments to or subsidise any retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013).

- (2) Notwithstanding anything in this Act, any person who, immediately before being appointed as the Chief Censor or the Deputy Chief Censor or, as the case may be, becoming an employee of the Classification Office, is a contributor to

the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 shall be deemed to be, for the purposes of the Government Superannuation Fund Act 1956, employed in the Government service so long as that person continues to hold office as the Chief Censor or the Deputy Chief Censor or, as the case may be, to be an employee of the Classification Office; and that Act shall apply to that person in all respects as if that person's service as the Chief Censor or the Deputy Chief Censor or, as the case may be, as such an employee were Government service.

- (3) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (2) entitles any such person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.
- (4) For the purpose of applying the Government Superannuation Fund Act 1956, in accordance with subclause (2), to a person who holds office as the Chief Censor or the Deputy Chief Censor or, as the case may be, is in the service of the Classification Office as an employee and (in any such case) is a contributor to the Government Superannuation Fund, the term **controlling authority**, in relation to any such person, means the Classification Office.

Schedule 1 clause 5(1): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 1 clause 5(1): amended, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

## **6 Application of certain Acts**

*[Repealed]*

Schedule 1 clause 6: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **7 Personnel policy**

*[Repealed]*

Schedule 1 clause 7: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **8 Equal employment opportunities programme**

*[Repealed]*

Schedule 1 clause 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

## **9 Services for Classification Office**

*[Repealed]*

Schedule 1 clause 9: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).



**10 Funds of Classification Office**

*[Repealed]*

Schedule 1 clause 10: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**11 Bank accounts**

*[Repealed]*

Schedule 1 clause 11: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**12 Investment of money**

*[Repealed]*

Schedule 1 clause 12: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**13 Classification Office not to borrow without consent of Minister of Finance**

*[Repealed]*

Schedule 1 clause 13: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**14 Auditor-General to be auditor of Classification Office**

*[Repealed]*

Schedule 1 clause 14: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**15 Seal**

*[Repealed]*

Schedule 1 clause 15: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**16 Exemption from income tax**

The income of the Classification Office shall be exempt from income tax.

## Schedule 2

### Enactments amended

s 150(1)

**Broadcasting Act 1989 (1989 No 25)***Amendment(s) incorporated in the Act(s).***Crimes Act 1961 (1961 No 43) (RS Vol 1, p 635)***Amendment(s) incorporated in the Act(s).***Customs Act 1966 (1966 No 19) (RS Vol 2, p 57)***Amendment(s) incorporated in the Act(s).***Higher Salaries Commission Act 1977 (1977 No 110) (RS Vol 19, p 623)***Amendment(s) incorporated in the Act(s).***Ombudsmen Act 1975 (1975 No 9) (RS Vol 21, p 657)***Amendment(s) incorporated in the Act(s).***Public Finance Act 1989 (1989 No 44)***Amendment(s) incorporated in the Act(s).***Summary Offences Act 1981 (1981 No 113) (RS Vol 28, p 887)***Amendment(s) incorporated in the Act(s).*

### Schedule 3 Enactments repealed

s 150(2)

**Accident Rehabilitation and Compensation Insurance Act 1992 (1992 No 13)**

*Amendment(s) incorporated in the Act(s).*

**Acts and Regulations Publication Act 1989 (1989 No 142)**

*Amendment(s) incorporated in the Act(s).*

**Crown Research Institutes Act 1992 (1992 No 47)**

*Amendment(s) incorporated in the Act(s).*

**Films Act 1983 (1983 No 130)**

**Films Amendment Act 1985 (1985 No 175)**

**Films Amendment Act 1987 (1987 No 140)**

**Films Amendment Act 1990 (1990 No 58)**

**Foreign Affairs Amendment Act 1993 (1993 No 48)**

*Amendment(s) incorporated in the Act(s).*

**Human Rights Act 1993 (1993 No 82)**

*Amendment(s) incorporated in the Act(s).*

**Indecent Publications Act 1963 (1963 No 22) (RS Vol 16, p 179)**

**Indecent Publications Amendment Act 1972 (1972 No 136) (RS Vol 16, p 203)**

**Indecent Publications Amendment Act 1977 (1977 No 79) (RS Vol 16, p 204)**

**Indecent Publications Amendment Act 1982 (1982 No 78) (RS Vol 16, p 205)**

**Indecent Publications Amendment Act 1983 (1983 No 27) (RS Vol 16, p 205)**

**Indecent Publications Amendment Act 1986 (1986 No 90)**

**Judicature Amendment Act 1991 (1991 No 60)**

*Amendment(s) incorporated in the Act(s).*

**Museum of New Zealand Te Papa Tongarewa Act 1992 (1992 No 19)**

*Amendment(s) incorporated in the Act(s).*

**Privacy Act 1993 (1993 No 28)***Amendment(s) incorporated in the Act(s).***Smoke-free Environments Act 1990 (1990 No 108)***Amendment(s) incorporated in the Act(s).***Taxation Acts Repeal Act 1986 (1986 No 48)***Amendment(s) incorporated in the Act(s).***Video Recordings Act 1987 (1987 No 85)****Video Recordings Amendment Act 1990 (1990 No 59)**

## **Schedule 4**

### **Specified CVoD providers**

ss 2, 150A

Schedule 4: inserted, on 10 August 2020, by section 10 of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49).

Alphabet Inc., a company registered and based in the United States of America

Amazon.com, Inc., a company registered and based in the United States of America

Apple Inc., a company registered and based in the United States of America

Microsoft Corp, a company registered and based in the United States of America

Netflix, Inc., a company registered and based in the United States of America

Sky Network Television Limited, a company registered and based in New Zealand

Sony Corporation, a company registered and based in Japan

The Walt Disney Company, a company registered and based in the United States of America

## Films, Videos, and Publications Classification Amendment Act 2005

Public Act	2005 No 2
Date of assent	21 February 2005
Commencement	see section 2

### 1 Title

- (1) This Act is the Films, Videos, and Publications Classification Amendment Act 2005.
- (2) In this Act, the Films, Videos, and Publications Classification Act 1993 is called “the principal Act”.

### 2 Commencement

- (1) The following sections (which relate to the issue under the principal Act of labels for restricted publications (other than films)) come into force on the day that is 3 months after the date on which this Act receives the Royal assent:
  - (a) section 3(1):
  - (b) sections 12 to 14:
  - (c) sections 20 and 21.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

## Part 1

### Amendments to principal Act

### 6 Transitional provision

- (1) Sections 3A to 3D of the principal Act (inserted by section 5) and section 23(2)(c)(i) of the principal Act (as amended by section 11) (the **new provisions**) apply only to—
  - (a) publications submitted or referred to the Classification Office or Board of Review under the principal Act before the commencement of this section, but not classified by the Classification Office or the Board (whether for a first time or by way of reconsideration) before that commencement; and
  - (b) publications submitted or referred to the Classification Office or Board of Review under the principal Act on or after the commencement of this section.
- (2) No person may be convicted of an offence against section 125(1) or section 126(1) of the principal Act in respect of conduct before the commencement of

this section if the conviction would rely solely on a classification made under any of the new provisions.

- (3) Without limiting section 42(3) of the principal Act, the Chief Censor may be satisfied under that subsection that there are special circumstances justifying reconsideration of a decision made in respect of a publication if the Chief Censor considers that the decision may be altered because of the new provisions.

#### **10 New section 19 substituted**

- (1), (2) *Amendment(s) incorporated in the Act(s).*
- (3) A direction given under section 19(a) or (b) (as that section read immediately before the commencement of this section) must be treated as if it were given under section 19(4) (as substituted by this section).

#### **12 Conditions relating to display of restricted publications**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) A condition imposed pursuant to section 27(4)(a) of the principal Act (as that section read immediately before the commencement of this section, and in subsection (3)(a) called the **former provision**) must, after the commencement of this section, be treated as having been imposed pursuant to section 27(4)(a) (as substituted by subsection (1)).
- (3) However, a condition to which subsection (2) applies must be treated as requiring the classification given to the publication concerned to be shown,—
  - (a) if the Classification Office specified a manner under the former provision, in that manner; and
  - (b) in every other case, in any manner the person who publicly displays the publication concerned thinks fit.

#### **17 Right of review**

- (1) *Amendment(s) incorporated in the Act(s).*
- (2) The amendment in this section applies only in respect of a decision of the Classification Office made on or after the commencement of this section.

#### **18 Applications for review**

- (1), (2) *Amendment(s) incorporated in the Act(s).*
- (3) The amendments in this section and section 19 apply only in respect of a decision of the Classification Office made on or after the commencement of this section.

## Reprints notes

### 1 *General*

This is a reprint of the Films, Videos, and Publications Classification Act 1993 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act 2020 (2020 No 49)

Public Service Act 2020 (2020 No 40): section 135

Telecommunications (New Regulatory Framework) Amendment Act 2018 (2018 No 48): section 40

Statutes Amendment Act 2018 (2018 No 27): Part 15

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Films, Videos, and Publications Classification (Interim Restriction Orders) Amendment Act 2017 (2017 No 43)

District Court Act 2016 (2016 No 49): section 261

Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015 (2015 No 42)

Telecommunications (Interception Capability and Security) Act 2013 (2013 No 91): section 123

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Films, Videos, and Publications Classification Amendment Act 2012 (2012 No 62)

Search and Surveillance Act 2012 (2012 No 24): sections 242–244

Criminal Procedure Act 2011 (2011 No 81): section 413

National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Amendment Act 2010 (2010 No 132): section 18

Policing Act 2008 (2008 No 72): sections 116(a)(ii)

Films, Videos, and Publications Classification Amendment Act 2007 (2007 No 58)



Films, Videos, and Publications Classification Amendment Act 2005 (2005 No 2)  
Crown Entities Act 2004 (2004 No 115): section 200  
National Library of New Zealand (Te Puna Mātauranga o Aotearoa) Act 2003 (2003 No 19): section 47  
Interpretation Act 1999 (1999 No 85): section 38(1)  
Films, Videos, and Publications Classification Amendment Act 1999 (1999 No 13)  
District Courts Amendment Act 1998 (1998 No 76): section 7  
Films, Videos, and Publications Classification Amendment Act 1998 (1998 No 45)  
Crimes Amendment Act (No 2) 1997 (1997 No 93): section 25  
Films, Videos, and Publications Classification Amendment Act 1997 (1997 No 44)  
Customs and Excise Act 1996 (1996 No 27): section 289(1)  
Department of Justice (Restructuring) Act 1995 (1995 No 39): section 3(1)(b)  
Newspapers and Printers Act Repeal Act 1995 (1995 No 13): sections 3, 4(1), (4)  
Films, Videos, and Publications Classification Act Commencement Order 1994 (SR 1994/188)