Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015

Public Act	2015 No 42
Date of assent	9 April 2015
Commencement	see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Films, Videos, and Publications Classification (Objectionable Publications) Amendment Act 2015.

2 Commencement

This Act comes into force on the 28th day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Films, Videos, and Publications Classification Act 1993 (the **principal Act**).

4 Section 124 amended (Offences involving knowledge in relation to objectionable publications)

In section 124(2)(a), replace "10 years" with "14 years".

5 Section 131 amended (Offence to possess objectionable publication)

(1) In section 131(1), replace "Subject to subsections (4) and (5), every" with "Every".

(2) After section 131(1), insert:

(1A) Subsection (1) is subject to subsections (4) and (5).

(3) After section 131(2), insert:

(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).

6 Section 131A amended (Offences relating to possession of objectionable publications and involving knowledge)

In section 131A(2)(a), replace "5 years" with "10 years".

7 New section 132B inserted (Presumption of imprisonment for repeat offenders)

After section 132A, insert:

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.

8 Sections 144 and 145 replaced

Replace sections 144 and 145 with:

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 or interim restriction order).

Legislative history

31 March 2015	Divided from Objectionable Publications and Indecency Legislation Bill (Bill 124–1) as Bill 124–2A
2 April 2015	Third reading
9 April 2015	Royal assent

This Act is administered by the Department of Internal Affairs.

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