

**Films, Videos, and Publications Classification (Urgent
Interim Classification of Publications and Prevention of
Online Harm) Amendment Bill**

Government Bill

As reported from the committee of the whole House

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Key to symbols used in reprinted bill

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text inserted

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Hon Jan Tinetti

Films, Videos, and Publications Classification (Urgent Interim Classification of Publications and Prevention of Online Harm) Amendment Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	3
3	Principal Act	3
Part 1		
Definitions, application of Harmful Digital Communications Act 2015, and interim classification assessments		
4	Section 2 amended (Interpretation)	3
5	New section 4AA inserted (Application of Harmful Digital Communications Act 2015)	3
	4AA Application of Harmful Digital Communications Act 2015	3
5A	Section 13 amended (Submission of publications by others)	3
5B	Section 14 amended (How to submit publications (officials))	4
5C	New section 14A inserted (How to submit publications (online content hosts))	4
	14A How to submit publications (online content hosts)	4
6	New sections 22A to 22D and cross-heading inserted	4
<i>Interim classification assessments</i>		
	22A Interim classification assessments by Classification Office	4
	22B Notice, registration, and effect of interim classification assessments	5

**Films, Videos, and Publications Classification (Urgent
Interim Classification of Publications and Prevention of
Online Harm) Amendment Bill**

	22C	No action to lie against officials	6
	22D	No action to lie against service providers and online content hosts	6
7		Section 38 amended (Decisions of Classification Office)	6

Part 2

Take-down notices for objectionable online publications, offences, and regulations

Take-down notices

8		Section 103 amended (Inspectors of Publications)	7
9		New Part 7A inserted	7

Part 7A

Take-down notices for objectionable online publications

	119A	Definitions for Part 7A	7
	119B	Application of Part and regulations	7
	119C	Issue of take-down notices	8
	119D	Contents of take-down notices	8
	119E	Online content host must comply with take-down notice	9
	119F	No action to lie against officials	9
	119G	No action to lie against online content host	10
	119H	Enforcement of take-down notices	10
	119I	Remedies and costs	10
	119J	Review of take-down notices	11
	119K	Reporting	11

Offences

9A		Section 131 amended (Offence to possess objectionable publication)	11
10		New section 132C and cross-heading inserted	11

Offence to livestream objectionable content or share objectionable livestreamed content

	132C	Offence to livestream objectionable content or share objectionable livestreamed content	11
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Regulations

12		Section 149 amended (Regulations)	12
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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Films, Videos, and Publications Classification (Urgent Interim Classification of Publications and Prevention of Online Harm) Amendment Act **2020**.

2 Commencement

This Act comes into force on ~~30 April 2024~~ **1 February 2022**.

3 Principal Act

This Act amends the Films, Videos, and Publications Classification Act 1993.

Part 1

5

**Definitions, application of Harmful Digital Communications Act
2015, and interim classification assessments**

4 Section 2 amended (Interpretation)

(1) In section 2, replace the definition of **Inspector** with:

Inspector means an Inspector of Publications holding office under section 103(1) or (2), and includes a constable except for the purposes of **Part 7A** (*see* section 103(3)) 10

(2) In section 2, definition of **publication**, paragraph (d), after “statements,”, insert “sounds,”.

(3) In section 2, definition of **publication**, after paragraph (d), insert: 15

(e) a copy of images or sounds that have been livestreamed, but not the live-streaming itself of those images or sounds (**livestream** has the meaning given in **section 119A**)

(4) In section 2, insert in its appropriate alphabetical order:

online content host has the meaning given in **section 119A** as qualified by **section 119B** 20

**5 New section 4AA inserted (Application of Harmful Digital
Communications Act 2015)**

After section 4, insert:

4AA Application of Harmful Digital Communications Act 2015 25

Sections 23 to 25 of the Harmful Digital Communications Act 2015, which relate to the liability of an online content host for content posted by a user, do not apply to processes or proceedings under **Part 7A** relating to online publications hosted by them.

5A Section 13 amended (Submission of publications by others) 30

(1) After section 13(1)(b), insert:

(ba) subject to **subsections (1A) and (1B)**, an online content host who or that has been issued with a take-down notice relating to an online publication: 35

(2) After section 13(1), insert:

- (1A) A submission by an online content host under **subsection (1)(ba)** must be submitted within 20 working days after they receive the take-down notice.
- (1B) The Chief Censor may determine that an online publication submitted to the Classification Office under **subsection (1)(ba)** will not be examined or classified by the office if— 5
- (a) the online publication has already been submitted to the Classification Office under this section; or
 - (b) the online publication has already been the subject of a classification decision; or
 - (c) the Chief Censor considers that the submitting of the online publication to the Classification Office is frivolous or vexatious. 10

5B Section 14 amended (How to submit publications (officials))

In section 14(1), replace “subsection (1)(a) or (b)” with “subsection (1)(a), (ab), or (b)”.

5C New section 14A inserted (How to submit publications (online content hosts)) 15

After section 14, insert:

14A How to submit publications (online content hosts)

- (1) An online content host who or that wishes to submit a publication to the Classification Office under **section 13(1)(ba)** must lodge a notice of submission in the prescribed manner with the Classification Office. 20
- (2) A notice of submission must be in the form provided for that purpose by the Chief Censor and must be accompanied by the prescribed fee (if any).

6 New sections 22A to 22D and cross-heading inserted

After section 22, insert: 25

Interim classification assessments

22A Interim classification assessments by Classification Office

- (1) This section applies to a publication submitted to the Classification Office for classification under section 13.
- (2) The Classification Office may make an interim classification assessment that the publication is likely to be objectionable. 30
- (3) The Classification Office may do so only if the Chief Censor believes that there is an urgent need to notify the public that the content of the publication is likely to be objectionable.
- (4) The following sections apply to the making of an interim assessment: 35
 - (a) sections 14, **14A**, 15, 17 to 19, 21, and 22; and

- (b) section 20, as modified by **subsection (5)**.
- (5) The Chief Censor may determine that submissions by the persons listed in section 20(1) must be made in a manner and within a time that the Chief Censor specifies after taking into account what is reasonable in the circumstances, including the need for urgency in dealing with the matter. 5
- (5A) The Classification Office may make an interim assessment on the basis of the information that is readily available to it if the Chief Censor considers it is reasonable in the circumstances, including the need for urgency in dealing with the matter.
- (6) The making of an interim assessment is not a relevant consideration for the purpose of, and does not affect, the later examination and classification of the same publication under section 23. 10
- 22B Notice, registration, and effect of interim classification assessments**
- (1) The Classification Office must give written notice to the submitter that an interim classification assessment has been made. 15
- (1A) The notice must contain the following:
- (a) a description of the publication that was the subject of the interim assessment; and
- (b) a summary of the reasons for the interim assessment.
- (2) An interim assessment must be registered under section 39, and that section applies as if the interim assessment were a classification decision, except that the following information must be entered in the register (instead of the information in section 39(3)(a) to (c)): 20
- (a) a statement that an interim assessment has been made of the publication and the date on which the assessment was made; and 25
- (b) the date on which notice of the interim assessment was given under **subsection (1)** (if applicable); and
- (c) the date of entry of the interim assessment in the register.
- (3) An interim assessment has effect for an interim period.
- (4) An **interim period** begins on the date an interim assessment is made and ends on the sooner of— 30
- (a) 20 working days after the date of the interim assessment:
- (b) the date on which a classification decision is made for the relevant publication.
- (5) This Act applies to a publication during an interim period as if it had been classified as being objectionable under section 23. 35

**Films, Videos, and Publications Classification (Urgent
Interim Classification of Publications and Prevention of
Online Harm) Amendment Bill**

Part 1 cl 7

- (6) A person, on request and on payment of the applicable fee (if any) as determined by the Classification Office, is entitled to a copy of a notice given under this section.
Compare: 1993 No 94 ss 38, 39
- 22C No action to lie against officials** 5
- The following people are immune from civil and criminal liability for actions done in good faith when carrying out or intending to carry out their official duties relating to interim classification assessments:
- (a) the Chief Censor:
 - (b) the Deputy Chief Censor: 10
 - (c) a classification officer:
 - (d) a member of the staff of the Classification Office:
 - (e) a member of the staff of the Department of Internal Affairs:
 - (f) an Inspector.
- Compare: 1993 No 94 ss 119, 137 15
- 22D No action to lie against service providers and online content hosts**
- (1) A service provider or an online content host is immune from civil and criminal liability if they remove, or prevent access by the public in New Zealand to, an online publication that is the subject of an interim classification assessment.
- (2) In this section,— 20
- online content host** has the meaning given in **section 119A** as qualified by **section 119B**
- online publication** has the meaning given in **section 119A**
- service provider** has the meaning given in section 122A.
- Compare: 1993 No 94 ss 119, 137 25
- 7 Section 38 amended (Decisions of Classification Office)**
- After section 38(2)(a), insert:
- (ab) the reasons an interim classification assessment was made under **section 22A** (if applicable), including the reasons for the Chief Censor’s belief described in **section 22A(3)**; and 30

Part 2

Take-down notices for objectionable online publications, offences, and regulations

Take-down notices

8 Section 103 amended (Inspectors of Publications) 5

In section 103(3), after “Act”, insert “except for the purposes of **Part 7A**”.

9 New Part 7A inserted

After section 119, insert:

Part 7A

Take-down notices for objectionable online publications 10

119A Definitions for Part 7A

- (1) In this Part, **section 149(ab)**, and any regulations made under **section 149(ab)**,—

livestream means to transmit over the Internet or any other electronic medium images or sounds as they happen 15

online content host, in relation to an online publication, means the person who or that has control over the part of the electronic retrieval system, such as an Internet site or an online application or similar, on which the publication is accessible

online publication means— 20

- (a) a publication under paragraph (d) of the definition of publication in section 2 that is accessible on an Internet site or an online application or similar; or
- (b) a publication under **paragraph (e)** of the definition of publication in section 2 (a copy of content that was livestreamed) that is accessible on an Internet site or an online application or similar; or 25
- (c) livestreamed content.
- (2) The definition of online publication in **subsection (1)** does not limit the definition of publication in section 2 for other purposes of this Act.

119B Application of Part and regulations 30

This Part and any regulations made under **section 149(ab)** apply to—

- (a) individuals in New Zealand (the **public**); and
- (c) online content hosts that provide services to the public regardless of whether an online content host is resident or incorporated in New Zealand or outside New Zealand. 35

119C Issue of take-down notices

- (1) An Inspector may issue a take-down notice relating to a particular online publication to an online content host if—
 - (a) an interim classification assessment has been made under **section 22A** that the online publication is likely to be objectionable; or 5
 - (b) the online publication has been classified as objectionable under section 23; or
 - (c) the Inspector believes, on reasonable grounds, that the online publication is objectionable.
- (2) Before issuing a take-down notice, an Inspector may, but is not required to, request that the online content host remove, or prevent access by the public to, the online publication. 10
- (3) A take-down notice issued under **subsection (1)(a)** has effect for the interim period referred to in **section 22B(4)** for the relevant interim assessment unless **subsection (4)** applies. 15
- (4) A take-down notice issued under **subsection (1)(a)** has permanent effect if a classification decision is made that the online publication is objectionable on and from the date of that decision.
- (5) A take-down notice issued under **subsection (1)(b) or (c)** has permanent effect on and from the date it is issued. 20
- (6) In each case the Inspector must notify the Chief Censor that a take-down notice has been issued.
- (7) *See section 119J* for review of a take-down notice. 25
Compare: 1993 No 94 s 108(1)

119D Contents of take-down notices

- (1) A take-down notice must—
 - (a) contain a description of the relevant online publication; and
 - (b) identify the URL or other unique identifier of the online publication; and
 - (c) require the online content host to remove, or prevent access by the public to, the online publication as soon as is reasonably practicable after receipt of the notice and no later than the time and date specified in the notice (the **required period**); and 30
 - (d) inform the online content host of the right of review under **section 119J**; and
 - (e) contain other information required by regulations made under **section 149(ab)** (if any). 35
- (2) When deciding on the length of the required period in a particular case, an Inspector must consider what period is likely to be reasonably practicable for the online content host to comply with the notice.

- (3) A take-down notice may also require an online content host to preserve a copy of the relevant online publication for the purpose of an investigation or proceedings.
- (4) A take-down notice may contain other information that an Inspector considers is useful or appropriate. 5

119E Online content host must comply with take-down notice

- (1) An online content host who or that receives a take-down notice must remove, or prevent access by the public to, all copies of the online publication that is the subject of the notice to or over which it has access or control as soon as is reasonably practicable after receipt of the notice but no later than the end of the required period. 10
- (2) If a take-down notice requires an online content host to preserve a copy of the relevant online publication for the purposes of an investigation or proceedings, they must preserve a copy, hold it securely, and provide it to an Inspector on request. 15
- (3) An online content host may also preserve a copy of the online publication if they intend to lodge or have lodged—
- (a) a submission under **section 13(1)(ba)** for a classification decision for the relevant online publication;
 - (b) an application for a review under Part 4 against the classification decision for the relevant online publication: 20
 - (c) a notice of appeal related to that application for review.
- (4) If **subsection (3)** applies, the online content host may preserve a copy of the online publication for as long as it is needed to complete the relevant process but must hold it securely. 25
- (5) A take-down notice continues to have effect, even if the publication that is the subject of the notice is received by the Classification Office under section 13 for a classification decision,—
- (a) until the classification decision is made; and
 - (b) until, if the publication is classified as objectionable, the completion of any review and related appeal. 30
- (6) If an online publication is confirmed as objectionable after the processes listed in **subsection (5)** have been completed or are no longer available, the relevant take-down notice then has permanent effect.

119F No action to lie against officials 35

The following people are immune from civil and criminal liability for actions done in good faith when carrying out or intending to carry out their official duties relating to take-down notices:

- (a) the Chief Censor:

- (b) the Deputy Chief Censor:
- (c) a classification officer:
- (d) a member of the staff of the Classification Office:
- (e) a member of the staff of the Department of Internal Affairs:
- (f) an Inspector. 5

Compare: 1993 No 94 ss 119, 137

119G No action to lie against online content host

An online content host is immune from criminal or civil liability—

- (a) if they remove or prevent access by the public to an online publication that is the subject of a take-down notice: 10
- (b) if they preserve a copy of an online publication for any of the reasons listed in **section 119E(3)** and hold it securely.

119H Enforcement of take-down notices

- (1) An Inspector may take enforcement proceedings in the District Court if an online content host fails or refuses to comply with a take-down notice within the required period. 15
- (2) In proceedings under this section, the court—
 - (a) must not examine or make a determination about the issuing or merits of a take-down notice:
 - (b) may determine whether the online content host had a reasonable justification for failing or refusing to comply with the notice within the required period or for any further delay after that period: 20
 - (c) may permit the Inspector, by order of the court, to obtain discovery and administer interrogatories:
 - (d) may order a remedy or costs under **section 119I**. 25

119I Remedies and costs

- (1) In proceedings under **section 119H**, the court may—
 - (a) order that the online content host comply with the take-down notice by a date specified in the order:
 - (b) order the online content host to pay a pecuniary penalty to the Crown: 30
 - (c) award costs as the court thinks fit:
 - (d) order interest to be paid in accordance with the court's rules.
- (2) A pecuniary penalty is payable in an amount that the court determines is appropriate, taking into account all relevant matters, and, in particular,—
 - (a) the nature and extent of the failure or refusal to comply with the notice; 35
 - and

- (b) the circumstances in which the failure or refusal to comply occurred (including whether this was intentional, inadvertent, or caused by negligence).
- (3) The standard of proof for the matters in **subsection (2)** is the balance of probabilities. 5
- (4) The amount of a pecuniary penalty must not exceed \$200,000.
- (5) Only 1 pecuniary penalty is payable in relation to the same take-down notice.
- 119J Review of take-down notices**
- (1) A take-down notice may be reviewed under this Act only as part of a review under Part 4 of the classification decision relating to the relevant online publication. 10
- (2) See **section 13(1)(ba)**, which allows an online content host to submit an online publication to the Classification Office for a classification decision.
- (3) See also **section 119E(5)** for the effect of a take-down notice pending a classification decision being made and the completion of a review and any related appeal. 15
- 119K Reporting**
- (1) The Secretary must—
- (a) make publicly available a list of all take-down notices issued that have been complied with; and 20
- (b) publish the number of take-down notices issued and the number that were complied with each year in the annual report of the Department of Internal Affairs relating to that year.
- (2) The Secretary must, in the list referred to in **subsection (1)(a)**, in each case, include the reasons for issuing the take-down notice. 25

Offences

- 9A Section 131 amended (Offence to possess objectionable publication)**
In section 131(2B), replace “paragraph (d)” with “paragraph (d) or **(e)**”.
- 10 New section 132C and cross-heading inserted** 30
After section 132B, insert:
- Offence to livestream objectionable content or share objectionable
livestreamed content*
- 132C Offence to livestream objectionable content or share objectionable
livestreamed content**
- (1) A person commits an offence if— 35

**Films, Videos, and Publications Classification (Urgent
Interim Classification of Publications and Prevention of
Online Harm) Amendment Bill**

Part 2 cl 12

- (a) they livestream content knowing or having reasonable cause to believe that it is objectionable; or
- (b) they share content, or information about how to access content, as it is being livestreamed—
- (i) knowing or having reasonable cause to believe that the content is objectionable; and
- (ii) with the intent of promoting or encouraging criminal acts or acts of terrorism.
- (2) A person who commits an offence under **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.
- (3) A person does not commit an offence under this section by reason only that they are—
- (a) the service provider who or that provided access to the Internet or other electronic medium on which the content was livestreamed to the person who livestreamed the content; or
- (b) the online content host who or that has control over the part of the electronic retrieval system, such as an Internet site or an online application or similar, on which the content was livestreamed.
- (4) In this section,—
- livestream** has the meaning given in **section 119A**
- objectionable** has the meaning given in section 3 (as if the livestreamed content were a publication)
- online content host** has the meaning given in **section 119A** as qualified by **section 119B**
- service provider** has the meaning given in section 122A.
- Compare: 1993 No 94 s 124

Regulations

12 Section 149 amended (Regulations)

After section 149(a), insert:

- (ab) prescribing information to be included in a take-down notice under **section 119D**:

**Films, Videos, and Publications Classification (Urgent
Interim Classification of Publications and Prevention of
Online Harm) Amendment Bill**

Legislative history

26 May 2020	Introduction (Bill 268–1)
11 February 2021	First reading and referral to Governance and Administration Committee
13 September 2021	Reported from Governance and Administration Committee (Bill 268–2)
19 October 2021	Second reading
26 October 2021	Committee of the whole House