



**OFFICE OF FILM
& LITERATURE
CLASSIFICATION**

Te Tari Whakarōpū Tukuata, Tubitubinga

**2005 Brief
to the Incoming Minister of Internal Affairs
Hon. Rick Barker**

1. Introduction

The Office of Film and Literature Classification is established by s76 of the Films, Videos, and Publications Classification Act 1993. The Classification Office replaced the Chief Censor of Films, the Indecent Publications Tribunal and the Video Recordings Authority. Its primary function is to determine the classification of any publication submitted to it by the Film and Video Labelling Body, the Secretary for Internal Affairs, the Comptroller of Customs, the Commissioner of Police, the Courts and members of the public. In the year ended 30 June 2005, the Office registered decisions on 2,169 publications.

(a) Independent Crown Entity

The Classification Office is an independent crown entity named in Part 3 of Schedule 1 of the Crown Entities Act 2004. Its board consists of the Chief Censor and the Deputy Chief Censor, who are chairperson and deputy chairperson respectively. The Chief Censor is also the Office's Chief Executive for purposes of the Public Finance Act 1989.

(b) Personnel

The current Chief Censor is Bill Hastings. He was appointed Deputy Chief Censor in 1998 and Chief Censor in 1999. His current term expires in October 2006. The current Deputy Chief Censor is Nicola McCully. She was appointed in 2002 and her current term expires in October 2005. Appointments to both offices are for a term of no more than three years and are made by the Governor-General on the recommendation of the Minister of

Internal Affairs acting with the concurrence of the Minister of Women's Affairs and the Minister of Justice. The Classification Act does not restrict the number of terms a Chief Censor or Deputy Chief Censor may serve. Both have indicated their interest in serving another term.

The Office currently employs 30 other people in its Information Unit, Classification Unit, Corporate Services Unit and Registry. The number of staff at the Office has been relatively stable since 1999.

(c) Accountability

A Memorandum of Understanding between the Minister of Internal Affairs and the Chief Censor establishes targets against which the Office's performance is measured. The Office makes quarterly reports to the Minister of Internal Affairs on its strategic, purchase and ownership performance. The Classification Act and Regulations are administered in the Ministry of Justice, but no report is made to the Minister of Justice.

The Office is audited by Audit New Zealand. In the most recent audit the Office received an unqualified opinion and an assessment of "Good" for service performance information and information systems, financial control systems, and financial management information systems, and "Excellent" for financial management control environment, and service performance management control environment.

(d) Funding

Since 1999, the Office has received annual Crown funding of \$1,960,000 through Vote: Internal Affairs Non Departmental Output Class for a Single Output Class 01 – Classification of Films, Videos, and Publications. The Office also receives revenue from classification fees charged to the Film and Video Labelling Body. This varies from year to year, and was \$975,310 for the year ended 30 June 2005. The Office has recorded net operating surpluses for the past seven financial years which have increased taxpayers' equity in the Classification Office to \$2,902,926 as of 30 June 2005. Its operating surplus for the year ended 30 June 2005 was \$227,185, largely the result of better than expected interest and Labelling Body revenue.

Given this record, consideration should be given to reducing the Office's obligation to report to you on a quarterly basis to a semi-annual basis.

2. Classification System

The Films, Videos, and Publications Classification Act 1993 gives the Office exclusive jurisdiction to classify publications. Publications are defined to include films, videos, DVDs, computer games, books, photos, pictures, newspapers, sound recordings, “any print or writing”, “any paper or other thing” upon which is shown images or words, and computer image, text and sound files. The definition is sufficiently broad to include t-shirts, playing cards, artwork, private mail, private e-mail, billboards, and shop-fronts, all of which have been classified at one time or another.

Only films, videos, DVDs and computer games are subject to a pre-release labelling regime. All other publications are released to the public without classification but must still comply with the law. The Secretary for Internal Affairs, the Comptroller of Customs, the Commissioner of Police, the Courts or a member of the public may submit any publication for classification. The Chief Censor may also direct the Secretary for Internal Affairs to submit a publication. In the year ended 30 June 2005, the Classification Office registered decisions on 264 publications submitted for classification by the Secretary for Internal Affairs, the Comptroller of Customs, the Commissioner of Police, the Courts and members of the public.

(a) Film and Video Labelling Body

Anyone who intends to offer or exhibit a film, video, DVD or restricted computer game to the public must obtain a label that shows its rating or classification from the Film and Video Labelling Body. The Labelling Body is a private entity that is approved by the Minister of Internal Affairs, who must be satisfied that it is representative of film producers, distributors and exhibitors. The Labelling Body is authorised to assign New Zealand G, PG and M labels to films, videos and DVDs (but not computer games) that have received equivalent ratings in Australia or the United Kingdom, without reference to the Classification Office. It is also authorised to assign a G, PG or M rating to unrated films, videos and DVDs (but not computer games) that have no restricted content, again without reference to the Classification Office.

Any computer game that has received a rating equivalent to G, PG and M in Australia or the United Kingdom, or that is unrated and has no restricted content, is exempt from New Zealand labelling requirements by virtue of s8(1)(q). It does not have to be submitted to the Labelling Body for a label or a rating and is allowed to be sold or hired with whatever foreign rating marking it may have.

If a film, video, DVD or computer game has restricted content, or has been classified MA15+ or higher in Australia or 15 or higher in the UK, it must be submitted to the Labelling Body, which must refer it for classification to the Classification Office. In the year ended 30 June 2005, the Office registered decisions on 1,905 publications submitted for classification by the Labelling Body.

(b) Film and Literature Board of Review

Any person who is dissatisfied with a decision of the Classification Office may seek a review of the publication by the Film and Literature Board of Review. The Board of Review consists of nine members appointed by the Governor-General on the recommendation of the Minister of Internal Affairs acting with the concurrence of the Minister of Women's Affairs and the Minister of Justice. The Board of Review is independent of, and has all the powers of, the Classification Office except the power to make a serial publication order. Additionally, the President of the Board has the power to issue an interim restriction order which prevents a publication being supplied, distributed, exhibited to someone under 18, or exhibited in a public place, until a review has been held and its classification determined.

The Secretary for Internal Affairs, the Comptroller of Customs, the Commissioner of Police, any party to a proceeding before a Court that referred a publication to the Office, and the publication's owner, maker, publisher and distributor, may seek a review as of right. Any other person must first obtain the leave of the Secretary for Internal Affairs to seek a review. The Board of Review does not review the Classification Office's decision. It must conduct its review of the publication without regard to the Office's decision.

In the year ended 30 June 2005, the Board of Review issued eleven decisions (Anatomy of Hell, Twentynine Palms, Shades of Red, Sinners No Doctor Yes Doctor, Irreversible, Closer, 9 Songs, Puni Puni Poemie, Resident Evil II: Apocalypse, Buttman magazines, and Private Fetish Machine No 17 The Cult). The Society for the Promotion of Community Standards obtained the Secretary for Internal Affairs' leave to bring five of these reviews. The Board of Review confirmed the Office's classification in four, and ruled the fifth review was brought out of time. The remaining six reviews were brought by the film owners or distributors. The Board confirmed the Office's classification in five, and lowered the classification of one, the film Closer, from R18 to R16.

(c) Department of Internal Affairs Censorship Compliance Unit

The Censorship Compliance Unit is independent of the Office and is primarily responsible for enforcing the offence provisions of the Classification Act. Each of its members is an Inspector of Publications, as is every police officer. The Office maintains a good working relationship with the Unit and last year collaborated with it to produce research on underage computer gaming.

3. 2005 Law Reform

In 2005, the Classification Act was amended to

- increase the penalties for possession of, and dealing in, objectionable publications;
- clarify that images of naked or partially naked children and young persons that could be reasonably regarded as sexual in nature are included as “matters such as sex” in s3(1);
- permit the Office to age-restrict publications containing highly offensive language;
- permit the Office to age-restrict publications dealing with, for example, piercing, glamorised suicide and imitable stunts, that are likely to be injurious to children and young persons;
- limit the maximum age restriction to 18 years;
- allow magazine distributors to apply for “official” labels from the Labelling Body; and
- decrease the burdens imposed upon members of the public who seek the leave of the Chief Censor to submit a publication for classification.

Regulation of “hate speech” and videos of people changing their clothes taken without their knowledge or consent were not included in these amendments. Before dissolution, the Government Administration Committee was conducting an inquiry into whether or not “hate speech” should be regulated. That Committee also reported back to the House the Crimes (Intimate Covert Filming) Amendment Bill which would have criminalised the making, possessing, publishing, importing and exporting of an “intimate visual recording”. This is defined as a recording made without the knowledge or consent of a person engaged in a private activity, in circumstances where that person has a reasonable expectation of privacy.

4. Strategic Issues

Digital technology and the Internet have created new challenges for the classification system. The Office's mandate is to classify publications in order to minimise the risk of injury to the public good posed by their unrestricted availability. Classifications provide the basis upon which the offence provisions are enforced, and they provide consumer advice. The Office must maintain its traditional role in examining and classifying tangible mediums such as videos, DVDs and films so that injury to the public good can be remedied, offence provisions can be enforced, and consumer advice given. The outcome of this strategy will be felt in cinemas; video, DVD and computer game retail outlets; libraries; and schools.

At the same time, digital technology and the Internet make it difficult to remedy injuries to the public good that take place in private homes, to enforce offence provisions and to give consumer advice on publications downloaded on telephone lines. The labelling regime has never applied to the private use of publications. The offence regime, however, has. The Office has decided to focus on information dissemination and education so that people can equip themselves to cope with potentially injurious publications. The outcome of this strategy will be felt in private homes.

The Office disseminates information on the classification system via its "Censor for a Day" high schools programme, website (www.censorship.govt.nz), community group talks, and information brochures distributed to video and game retailers. The Office works with media to produce shows such as the recent "Blame Games" for TV One's Sunday documentary, and has recently been working with telecommunication providers on a 3G content provision code for mobile phones. The Office has commissioned research into consumer understanding of computer game labelling and the extent to which restrictions on the availability of computer games are ignored by parents and teenagers.

There is a relatively straightforward demarcation of jurisdiction between the Office and the Broadcasting Standards Authority. The Office has jurisdiction to classify anything recorded or stored that is offered for supply or exhibited to the public. The BSA has jurisdiction over the transmission of programmes to more than one person. Streaming video therefore is covered by the Broadcasting Act; when that streaming video has been stored in a computer cache for example, it is covered by the Classification Act. The Office continues to work well with the Broadcasting Standards Authority on these matters.

The Office has put online the New Zealand Censorship Database, a publicly searchable database that currently includes decisions of the Office, the Indecent Publications Tribunal, and the Video Recordings Authority. When it is completed, it will be the world's only multi-authority, multi-media censorship database dating back to 1917.

The Office performs an archival function. Decisions of abolished censorship authorities are deemed by law to be currently in force. Many of these decisions are recorded on archaic mediums such as VAX tapes and crumbling carbon copied paper. The Office also stores copies of video recordings dating back to 1987. The National Archives stores many 35mm film excisions required by past Chief Censors of Film, the oldest of which have recently been destroyed by vinegar disease. To avoid further loss, information stored on these old mediums should be digitised.

The Fees Regulation has not been amended since 1998. The Office has commissioned a fees review which will form the basis of recommendations to the Minister of Justice on amending the Fees Regulations. This will logically also necessitate a review of the Office's baseline funding by the Minister of Internal Affairs and better measurement of the Office's costs by the Office.

The underage computer gaming research has shown that the presence of foreign rating labels on unrestricted computer games is a source of confusion. Magazines have recently been brought into the unified labelling regime. The Office believes that unrestricted computer games should also be brought into the unified labelling regime to reduce public, and particularly parental, confusion. This requires the repeal of s8(1)(q).

5. Stakeholders

(a) Governmental

Those subject to direction from the Chief Censor:

- Secretary for Internal Affairs;
- Comptroller of Customs.

Those who may submit publications without leave of the Chief Censor:

- Censorship Compliance Unit of the Department of Internal Affairs;
- New Zealand Customs Service;
- Commissioner of Police;
- District Courts and Registrars.

Those formally associated with the Office or the Chief Censor by legislation:

- State Services Commissioner;
- Audit New Zealand;
- Ministry of Women's Affairs;
- Ministry of Justice.

Those informally associated with the Office or the Chief Censor by nature of work or who have recently made submissions:

- Office of the Children's Commissioner;
- Human Rights Commission;
- Broadcasting Standards Authority;
- Victoria University of Wellington;
- New Zealand Defence Forces.

(b) Private

- Members of the public;
- Film and Video Labelling Body Inc.;
- New Zealand Film Festival Trust;
- Film, video, DVD and computer game producers, distributors and exhibitors;
- Gordon & Gotch magazine distributor;
- Libraries and print media retailers;
- Community organisations such as Rotary, Probus, and Lions clubs; Parentline, ECPAT, Aids Foundation;
- High schools and media studies teachers organisations;
- Television, radio, and print media;
- Telecom, Vodafone and Telstra Clear.



W K Hastings

Chief Censor of Film and Literature