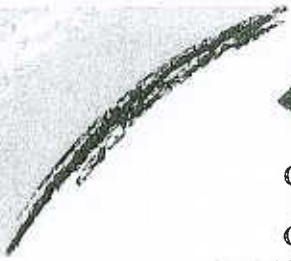
Level 4, BP House
20 Customhouse Quay
PO Box 1999
Wellington, NZ

Tel. +64 4 471 6770
Fax. +64 4 471 6781
Free. 0508 CENSOR

www.censorship.govt.nz information@censorship.govt.nz



OFFICE OF FILM
& LITERATURE
CLASSIFICATION
Te Tari Whakarōpū Tukuata, Tuhituhinga

19 November 2008

Hon Dr Richard Worth
Minister of Internal Affairs
Associate Minister of Justice

Dear Minister

Brief of the Office of Film and Literature Classification

This brief is written to you as the new Minister responsible for the Office of Film and Literature Classification. It is also possible as Associate Minister of Justice that you will be responsible for the Films, Videos, and Publications Classification Act and Regulations because these are administered in the Ministry of Justice. At the request of officials from the Department of Internal Affairs I somewhat reluctantly agreed to delay delivery of this letter to you until today, 26 November 2008.

1. Introduction

The Office of Film and Literature Classification is established by section 76 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 2008, the Office registered decisions on 2,821 publications.

2. Purpose

The Classification Act requires the Office to minimise the risk to New Zealand society caused by the unrestricted availability of publications depicting matters such as sex, horror, crime, cruelty and violence. The Office does this by classifying publications submitted to it as objectionable, restricted or unrestricted according to criteria set out in the Classification Act. Consequences of classification include labelling obligations and a risk of prosecution for non-compliance with the terms of the classification. The Office is also required to keep the public informed about censorship, to conduct research and to receive complaints and inquiries. As a result, New Zealand society is better protected from the injury caused by the unrestricted availability of these publications, and the New

Zealand public is better educated and informed about censorship and the limits of free expression.

3. Structure

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. Section 88 of the Classification Act creates a unit within the Classification Office called the Information Unit that conducts research, receives complaints and inquiries and disseminates classification information to the public.

4. Personnel

I was appointed Deputy Chief Censor by the National Party-led government in 1998, and then Chief Censor by the Labour Party-led government in 1999, having been senior lecturer and deputy dean of law at Victoria University. My current term expires in October 2009. The Deputy Chief Censor is Nicola McCully. She was appointed in 2002 having worked at the Classification Office since its inception in 1994. Her current term expired in September 2008. 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. We are willing to serve another term.

The Office currently employs 33 other people in its Information Unit, Classification Unit, Corporate Services Unit and Registry. Two-thirds of the Office's staff are women. Twenty of the Office's staff have children, and 13 work on a part-time or casual basis. The number of staff at the Office has been relatively stable since 1999 despite a 30% increase in classification activities over the last 5 years.

5. Accountability

The Office's Statement of Intent establishes targets against which the Office's performance is measured in its Annual Report. The Office makes three quarterly reports each year to the Minister of Internal Affairs on its service performance. The Chief Censor and the Minister of Internal Affairs are also parties to a bilateral Memorandum of Understanding that establishes a "no surprises" basis for direct communication between us.

The Classification Act and Regulations are administered in the Ministry of Justice, but no report is made to the Minister of Justice.

The Office's financial statements and statement of service performance for the year ended 30 June 2008 received an unqualified opinion from Audit New Zealand. In its Interim Management Report for the year ended 30 June 2008, Audit New Zealand

graded the Office's management control environment "Good" and its financial information systems and controls "Very Good".

6. 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 $1,438,394 for the year ended 30 June 2008. The Office has recorded net operating surpluses for the past ten financial years which have increased taxpayers' equity in the Classification Office to $3,700,562 as of 30 June 2008. Its operating surplus for the year ended 30 June 2008 was $246,986, largely the result of better than expected interest and Labelling Body revenue.

7. Performance

This year the Classification Office achieved its quantity and quality targets. It failed to achieve, by a narrow margin, its overall timeliness targets for examining and classifying publications, largely due to a greater than predicted number of publications submitted at irregular intervals. The Office will rectify this failure by making better use of its part-time staff and persuading the private sector through the Labelling Body to make their submissions more regular.

The Office banned 300 publications this year, 16% of all the publications it classified. 227 of these were digital files from the internet. Half were banned because they promoted the exploitation of children or young persons for sexual purposes.

The Office registered classifications on 330 publications received from the Courts, members of the public and Crown enforcement agencies. The remaining 2,491 registrations were for publications received from the Labelling Body.

8. Strategic Issues Facing the Office

(a) Regulating digital content

The law requires the Office to 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 these activities will be felt in cinemas, schools, libraries, and video, DVD and computer game retail stores.

At the same time, digital technology and the internet challenge the Office to come up with new ways of remedying injuries to the public good that take place in private homes, and new ways of giving consumer advice with respect to digital publications downloaded on telephone lines. The significance of these challenges will increase as broadband becomes faster and less costly for the consumer.

The Office has adopted a number of strategies to achieve its mandate to minimise the risk to New Zealand society caused by the unrestricted availability of digital publications depicting matters such as sex, horror, crime, cruelty and violence. Some of these strategies require the help of the executive and Parliament.

The first strategy has been to strengthen the Office's capacity to disseminate censorship information 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, material to support NCEA Media Studies Level 3 Achievement Standard AS90779, its website (www.censorship.govt.nz), community group talks, advertisements, and information brochures and posters distributed to libraries, cinemas, DVD and game retailers. The Office is investing in improvements to its publicly searchable database and has conducted and made available research on new technologies.

The second strategy is to manage issues raised by digital technology with other regulators and content providers. Such management involves the identification of overlapping jurisdiction, or gaps in jurisdiction, and informing providers of digital content of their legal obligations. The Office recently assisted the Telecommunications Carriers' Forum in developing a *Code of Practice for Provision of Content via Mobile Phones.* The Office maintains regular dialogue with the Broadcasting Standards Authority, the Film and Video Labelling Body and overseas regulators with respect to issues raised by digital technology.

The third strategy is to identify areas where legislative or regulatory reform is needed to cope with digital technology. For example, the definition of "publication" and the offence provisions were updated in 2005 to cover digital content. The labelling provisions were not updated, only partly provide for digital labelling on trailers and television advertisements, and need to be made consistent with the offence provisions and current haphazard voluntary practice. Protection of the public good from injury, and public confidence in the classification system, would be enhanced by amendments to the Classification Act and Regulations that would

- require previously rated or classified content accessible by podcast or iTunes to carry digital labels displaying those classifications; and
- require unrated and unclassified content accessible by podcast or iTunes to be rated and digitally labelled.

The Office made no submission to the previous government with respect to the Ministry of Culture and Heritage's review of digital broadcasting regulation, viewing its role as an implementer of whatever policy the government asked Parliament to enact. The Classification Office is however happy to provide advice and would appreciate the Minister's thoughts on whether advances in digital technology require the creation of a new multimedia regulatory body and statute, or relatively small amendments to existing legislation to clarify the jurisdiction existing authorities already have over digital content. Both Australia and the United Kingdom have already dealt with this issue. Although both created larger media regulatory bodies (ACMA and Ofcom respectively), neither merged their censorship bodies into them (the Australian Classification Board and British

Board of Film Classification respectively). Indeed, both Ofcom and ACMA continue to refer content to the censor's office for classification.

(b) Using digital technology to preserve records and inform the public

The Classification Act deems classification decisions made by abolished censorship authorities to be current and legally binding. This requires the Office to perform an archival function to preserve old records from as far back as 1917. Many of these decisions are recorded on archaic mediums such as VAX tapes and in spidery handwriting on crumbling carbon-copied paper.

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 new Classification Database Application (CDA) will integrate the New Zealand Censorship Database and improve the Office's other increasingly antiquated and unsupported systems. The new system will allow the Office to cope with the growing quantity of submissions without compromising the quality of the Office's decisions and integrity of its processes. The new system will ensure the Office is able to continue to meet its reporting responsibilities to the Crown. The CDA will provide enhanced workflow guidance and monitoring. The project is being delivered in phases and each phase permits the Office to test part of the functionality of the whole system as it is developed. Funding for the development of the CDA has been met from the Office's reserves, so no supplementary Crown funding has been or will be sought.

(c) Updating classification fees to reflect current costs

The fees for classifying publications prescribed in the Fees Regulation have not changed since 1 July 1997. The current Fees Regulation does not adequately capture digital technology or significant cost drivers such as running time. Eleven years on, it is possible that the prescribed fees do not reflect the actual costs of classifying particular publications. To provide the foundation for a new Fees Regulation, the Office commissioned a review of its costs in 2005. Although the Ministry of Justice administers the Fees Regulation, in 2006 officials from the Department of Internal Affairs and the Ministry of Justice agreed that the Department of Internal Affairs would lead, on behalf of the Ministry of Justice, the new Fees Regulation project. When completed, a new Fees Regulation will logically also necessitate a review of the Office's baseline funding through Vote: Internal Affairs Non Departmental Output Class for a Single Output Class 01 – Classification of Films, Videos, and Publications.

(d) Unlabelled unrestricted computer games

When the Act was drafted in 1993, video games were included in the list of films such as documentaries, wedding videos, and natural history movies that were thought to be sufficiently innocuous not to require labels. Few people anticipated that the technology of video games would develop so quickly to the point that they are now sold in dedicated retail outlets. By exempting unrestricted video games from labelling requirements,

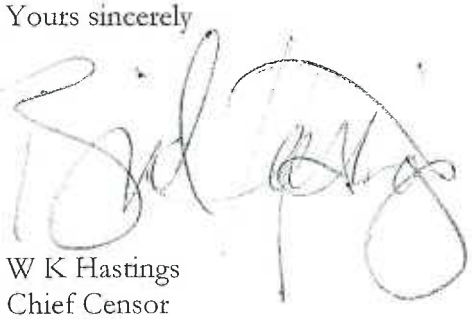
section 8(1)(q) permits them to carry a variety of foreign labels instead of New Zealand labels. The Office's research has shown that consumers are confused by these unfamiliar foreign labels. Unrestricted computer games are the only type of film that does not have to display New Zealand labels. There is no reason to retain this discrepancy produced by an anachronism.

Magazines and other non-film publications were brought into the unified labelling regime in 2005. The Office believes that unrestricted computer games should also be brought into the unified labelling regime to reduce public, and particularly parental, confusion, and to maintain public confidence in the integrity of the New Zealand labelling system. This requires the repeal of s8(1)(q).

9. Conclusion

I have attached three appendices, one summarising the operation of the classification system and the bodies involved in it, one listing those persons and bodies who could be considered the Office's key stakeholders, and the third a draft memorandum that sets out in greater detail a number of the legislative and regulatory changes discussed above. It also sets out other amendments that would improve the operation of the classification system and bring aspects of the law into conformity with practice. Recent annual reports and research reports are available from our website. I would be delighted to have an opportunity to discuss these and other matters with you at your earliest convenience.

Yours sincerely



W K Hastings
Chief Censor

Appendix 1 – The Operation of the Classification System

The Films, Videos, and Publications Classification Act 1993 gives the Office exclusive jurisdiction to classify publications. Publications are broadly defined to include films, video recordings, DVDs, computer games, books, sound recordings, pictures, newspapers, photographs, "any print or writing" whether or not it is published, any paper or "other thing", as well as digital, electronic and computer 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. A classification may result in the imposition of labelling obligations on anyone supplying or exhibiting a publication to the public. A classification may also result in the enforcement of a range of offence provisions against anyone breaching the classification.

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 and members of the public may submit any publication for classification. The Chief Censor may also direct the Secretary for Internal Affairs and the Comptroller of Customs to submit a publication. In the year ended 30 June 2008, the Classification Office registered decisions on 330 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 from the Film and Video Labelling Body that shows its rating or classification. 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. The Labelling Body effectively rates and labels about 85% of the moving image market 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 anyone wants to exhibit or supply to the public a film, video, DVD or computer game that has restricted content, or that 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 this respect, the Labelling Body effectively

acts as the agent of private sector film producers, distributors and exhibitors who are charged a classification fee for films that must be classified by the Office before they can be labelled and exhibited or supplied to the public. Private sector film producers, distributors and exhibitors cannot bypass the Labelling Body and submit films directly to the Classification Office.

(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.

(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. The Unit submits publications to the Office for classification on behalf of the Secretary for Internal Affairs. Each of its staff members is an Inspector of Publications, as is every police officer.

Appendix 2 – List of Stakeholders

Governmental

Those subject to direction from the Chief Censor:

- Secretary for Internal Affairs;
- Comptroller of Customs.

Those who submit publications without leave of the Chief Censor:

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

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

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

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

- Office of the Children's Commissioner;
- Human Rights Commission;
- Broadcasting Standards Authority;
- Victoria University of Wellington;
- Environmental Risk Management Authority.

Non-governmental

- 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.

Appendix 3 – Draft Memorandum to the Minister of Justice with respect to classification law reform

Introduction

1. The Office of Film and Literature Classification is established by s76 of the Films, Videos, and Publications Classification Act 1993. The Classification Office is an independent crown entity named in Part 3 of Schedule 1 of the Crown Entities Act 2004. 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 2008, the Office registered decisions on 2,821 publications.

2. Publications are broadly defined to include films, video recordings, DVDs, computer games, books, sound recordings, pictures, newspapers, photographs, "any print or writing" whether or not it is published, any paper or "other thing", as well as electronic or computer files. A classification may result in the imposition of labelling obligations on anyone supplying or exhibiting a publication to the public. A classification may also result in the enforcement of a range of offence provisions against anyone breaching the classification.

3. The Minister of Justice is responsible for the Films, Videos, and Publications Classification Act 1993, the Films, Videos, and Publications Classification Regulations 1994, and the Films, Videos, and Publications Classification (Fees) Regulations 1994. The principal Act and Regulations were last amended in 2005. The Fees Regulations were last amended in 1996.

Principal Issue

4. Changes in technology make amendments to the Act and both sets of Regulations highly desirable. Other amendments will improve the operation of the classification system. All of these amendments will ensure that the classification system operates on a sound legal basis aligned with current best practice, maintains public credibility, and is able to protect the public good from injury by regulating the content delivered by new technology.

Amendments to the Films, Videos, and Publications Classification Act 1993

5. **Section 2: amend the definition of "film"**

   Issue: Section 6 requires that any person who supplies, offers to supply, or exhibits a film to the public, must first obtain a label for that film. "Film" is defined in section 2 as "a cinematograph film, a video recording, and other material record of visual moving images". The definition applies well to

traditional tangible mediums such as celluloid film, video recording cassettes, DVDs, and console and computer games on discs. The definition does not apply well to digital movies delivered by podcast or iTunes. Although a digital file must be physically stored in a tangible server or hard drive, the file itself is arguably not a "material record of visual moving images" to which a label may be affixed.

In the absence of a clear statutory definition, some distributors are voluntarily displaying digital versions of labels on movies and computer games advertised on the internet and television in recognition of the public's confidence in the credibility of the labelling system. To prevent erosion of public confidence through the voluntary and haphazard application of labels to digital movies, the law should require that a digital movie carries a digital version of the label that was issued for it on film, video recording or disc.

The offence provisions were updated in 2005 to cover digital content. The labelling provisions were not and need to be made consistent.

Solution: Remove the word "material" from the definition of "film". Move the definition of "digital content" from section 122A to section 2. Insert the words "digital content" after "a video recording" in the definition of "film" in section 2.

6. Section 2: amend the definition of "supply" and "supply to the public"

Issue: Section 6 requires that any person who supplies, offers to supply, or exhibits a film to the public, must first obtain a label for that film. The definition of "film" will cover podcasts if it is amended to include digital content. Television websites make available podcasts of shows they have previously broadcast, many of which will be rated or classified and then retailed on DVDs in box sets displaying labels. Most podcasts however are supplied to the public for free. The definitions of "supply" and "supply to the public" require a sale, hire, exchange or loan. A supplier of free podcasts therefore has no obligation to obtain labels for them. There is no reason why podcasts offered to the public should be exempt from the labelling requirements imposed on films, DVDs and computer games simply because no charge is made for them.

The offence provisions were updated in 2005 to cover the supply of digital content without charge. The labelling provisions were not and need to be made consistent.

Solution: In the definition of "supply", insert the words "or distribute" after "or deliver by way of hire" and the words "or distribution" after "or offer for sale or hire". In the definition of "supply to the public" insert clause (ab) "means to distribute it;". Move the definition of "distribute" from section 122 to section 2.

7. **Section 8(1)(q): repeal it to require the labelling of unrestricted video games**

Issue: When the Act was drafted in 1993, video games were included in the list of films such as documentaries, wedding videos, and natural history movies that were sufficiently innocuous not to require labels. Few people anticipated that the technology of video games would develop so quickly to the point that they are now sold in dedicated retail outlets. By exempting unrestricted video games from labelling requirements, section 8(1)(q) permits them to carry a variety of foreign labels instead of New Zealand labels. The Office's research has shown that consumers are confused by these unfamiliar foreign labels. Unrestricted computer games are the only type of film that does not have to display New Zealand labels. There is no reason to retain this discrepancy produced by an anachronism.

Solution: Repeal section 8(1)(q).

8. **Section 8(3)(a): amend it to reflect current practice in which exempt films with restricted content are labelled**

Issue: Section 8(3)(a) appears to state that a film is not exempt from labelling requirements if it is a "restricted publication". "Restricted publication" is defined in section 2 to mean "a publication that is classified under section 23(2)(c)". There would appear to be no need for section 8(3)(a) because the Office would have already directed the Labelling Body under section 36 to issue a label for every film it has already classified as restricted. To give section 8(3)(a) meaning, it has been interpreted to require a film that is likely to be restricted to be submitted for labelling.

The offence provisions were updated in 2005 to make it an offence to supply, distribute, exhibit or display to any person under the age of 18 years a publication likely to be restricted. The labelling provisions were not and need to be made consistent.

Solution: Amend section 8(3)(a) to require a film that is likely to be restricted to be submitted for labelling by inserting the words "likely to be" before "a restricted publication".

9. **Sections 47 and 48A: amend them to permit the President of the Board of Review to grant or decline leave**

Issue: Section 47 requires "any other person" who seeks a review of a publication to obtain the leave of the Secretary for Internal Affairs who may grant or decline leave to submit it to the Board of Review for review. This is the only role the Secretary has in the classification review process. If the Secretary originally submitted the publication to the Office for classification, the vesting of

power in the Secretary to decide whether or not it is reviewed exposes him to allegations of conflict of interest. Normally, it is the head of an organisation who performs gate-keeping and interlocutory functions. For example, the Chief Censor is given the power to grant or decline leave to submit publications for classification, to determine notices of submission, to waive fees, to grant or decline urgency, etc. The President of the Board of Review is given the power to grant, decline, vary and revoke interim restriction orders. The Secretary should retain administrative functions such as receiving review applications and fees that can be delegated to the Board's Secretary in a manner consistent with section 102. The Secretary's power to decide leave however is anomalous and should be transferred to the President of the Board of Review.

Solution: Replace the word "Secretary" in sections 47(2)(e), 47(3), 48A(a), and 48A(a)(i) with the words "President of the Board". Retain the word "Secretary" in sections 47(3)(b), 48(1)(b) and 48(2).

10. Section 72: amend it to provide a structural link between the Labelling Body and the Classification Office

Issue: The Act gives statutory powers and imposes public obligations on the Labelling Body, but after initial ministerial approval creates no public accountability mechanism by which its exercise of public powers and performance of public obligations can be assessed. There should be a mechanism that both holds the Labelling Body to account for its exercise of statutory powers and obligations, and maintains its character as a private sector body representative of producers, exhibitors and distributors. The Labelling Body, an incorporated society, and the Classification Office, an independent Crown entity, have a deep understanding of the operation of the rating, classification and labelling system and a good working relationship.

Solution: The Chief Censor becomes a member of the Labelling Body Board. Amend section 72(4)(a) by adding clause (iv) "the Chief Censor."

11. Section 128: amend it to allow the Classification Office to show restricted publications to persons for educational or professional purposes

Issue: Section 128 permits the Classification Office to show objectionable publications to persons for educational or professional purposes, but not restricted publications for the same purposes. It seems logical that exceptions which apply to banned films at the high end of the scale should also apply to restricted films at the low end. This would enable the Office to show restricted films to teenagers who are most affected by the restriction. By way of example, the amendment would allow the Office to show a film to an audience of fifth formers to assist it to classify the film even if the film were subsequently classified R18. Currently this is an offence under section 126.

Solution: Amend section 128 to remove the words "section 123 or section 124" and substitute the words "sections 123, 124, 125, 126 or 127".

Amendments to the Films, Videos, and Publications Classification Regulations 1994

12. Regulation 4: delete references to defunct overseas classification authorities

Issue: The Labelling Body must cross-rate any film that has been rated G, PG or M in Australia, or Uc, U, PG, 12A or 12 in the UK, and issue the equivalent New Zealand label for that film. The Labelling Body must send any film that has been classified MA15+ or higher in Australia or 15 or higher in the UK to the Classification Office for classification. Any regulation that refers to overseas classification authorities by name risks obsolescence if those authorities change. Regulation 4 refers to an Australian body that no longer exists, and makes no reference to classification review bodies in either Australia or the UK.

Generic reference to classification authorities in Australia and the UK resolves this problem.

Solution: Delete the words "following authorities" from Regulation 4 and substitute the words "classification authorities of the following jurisdictions". Delete from Regulation 4(1)(a) "the Films Censorship Board of Australia" and substitute "Australia". Delete from Regulation 4(1)(b) "the British Board of Film Classification" and substitute "the United Kingdom".

13. Labelling of digital content

Issue: The Regulations provide for the display of digital labels on trailers exhibited to the public and on television advertisements. They do not provide for the display of digital labels on movies accessible as digital files, or that are advertised, on the internet. Some providers voluntarily display digital labels on movies advertised on the internet and on trailers delivered to mobile phones.

The offence provisions were updated in 2005 to cover the supply of digital content without charge. The labelling provisions were not and need to be made consistent. The coverage of existing regulations permitting the display of digital labels on trailers and television advertisements should be extended to all digital content to standardise existing voluntary but haphazard practice.

Solution: Insert new Regulations 39A and 39B incorporating the amended definition of "film":

39A On films

(1) Where any film in respect of which a label has been issued is distributed or offered for distribution to the public, the content of the label issued in respect of that film shall be shown on the film in accordance with the following requirements:

(a) In the case of a film to which a rating has been assigned, there shall be shown—

(i) The rating symbol applicable to the film; and

(ii) An explanation of that symbol, in the terms of the relevant paragraph of regulation 12(1) of these regulations; and

(iii) Any description assigned to the film:

(b) In the case of a film that has been classified as a restricted publication, there shall be shown—

(i) The classification symbol applicable to the film; and

(ii) An explanation of that symbol, in the terms of the actual classification of the film; and

(iii) Any description assigned to the film:

(c) The content of the label shall appear at the beginning of the film, in such a manner as to be clearly legible for not less than 5 seconds.

(2) Notwithstanding anything in subclause (1) of this regulation, on any specified occasion or occasions when for technical or other reasons it is not possible to comply with the requirements of that subclause, the information specified in that subclause may be shown by means of such other method or methods as the Chief Censor may from time to time approve, either generally or in a particular case.

39B On internet advertisements

(1) Every internet advertisement that advertises to the public any film in respect of which a label has been issued shall include the following:

(a) In the case of a film to which a rating has been assigned, there shall be included—

(i) The rating symbol applicable to the film; and

(ii) An explanation of that symbol, in the terms of the relevant paragraph of regulation 12(1) of these regulations; and

(iii) Any description assigned to the film:

(b) In the case of a film that has been classified as a restricted publication, there shall be included—

(i) The classification symbol applicable to the film; and

(ii) An explanation of that symbol, in the terms of the actual classification of the film; and

(iii) Any description assigned to the film.

(c) If the internet advertisement is a film, the content of the label shall appear at the beginning of the film, in such a manner as to be clearly legible for not less than 5 seconds.

(2) Notwithstanding anything in subclause (1) of this regulation, on any specified occasion or occasions when for technical or other reasons it is not possible to comply with the requirements of that subclause, the information specified in that subclause may be shown by means of such other method or methods as the Chief Censor may from time to time approve, either generally or in a particular case.

14. Schedule 4: amend table to improve the translation of film ratings and classifications made under repealed statutes

Issue: Schedule 4 purports to translate film ratings and classifications made under repealed Films Acts and the repealed Video Recordings Act 1987 to the ratings and classifications currently used. The reprinted version of the schedule omits the previous version's horizontal lines making it difficult to know which groups of old ratings translate to a single new rating. The schedule inappropriately translates old RP classifications made under repealed Films Acts to a modern M, and the old GA rating to a modern PG. The schedule also omits to translate an R13 made under the Films Act 1983 to any current classification.

Solution: Restore horizontal lines to the table. Translate the old Films Act GA rating to the modern M rating. Translate the old Films Act RP(specified age) classification to the modern RP(specified age) classification. Translate the old Films Act R13 classification to the modern R13 classification. Change the title of the schedule to "Equivalent film ratings and classifications".

Amendments to the Films, Videos, and Publications Classification (Fees) Regulations 1994

15. To bring aspects of the Fees Regulation into compliance with current practice

Amend Regulation 4(1)(b)(i) and (ii) to remove all words after "days", and in each case replace the word "within" with the word "in".

Amend Regulation 13(1)(a) by replacing the word "consideration" with "examination".