

# **Films, Videos, and Publications Classification (Interim Restriction Order Classification) Amendment Bill**

Member's Bill

As reported from the Justice and Electoral Committee

## **Commentary**

### **Recommendation**

The Justice and Electoral Committee has examined the Films, Videos, and Publications Classification (Interim Restriction Order Classification) Amendment Bill, and recommends that it be passed with the amendments shown.

### **Introduction**

The Films, Videos, and Publications Classification (Interim Restriction Order Classification) Amendment Bill aims to give the President of the Film and Literature Board of Review, the High Court, and High Court judges more flexibility when making interim restriction orders. To achieve this goal, it proposes to amend the Films, Videos, and Publications Classification Act 1993.

The key provisions in the bill are intended to allow interim restriction orders to completely restrict access to a publication, as they do currently, or restrict access only to people who:

- are a certain age
- belong to a certain class, such as tertiary students
- are accessing the publication for a certain purpose, such as a film festival.

These three new types of interim restriction orders reflect the classifications that may be imposed on a publication by the Office of Film and Literature Classification.

This commentary covers the main amendments we recommend to the bill. It does not discuss minor or technical amendments.

## **New Zealand’s classification process**

The Office of Film and Literature Classification is responsible for classifying publications such as films, videos, books, games, and audio recordings. The purpose of this classification system is to protect the New Zealand public and inform them about the publications they use.

Classifications can be reviewed. Applications for reviews of classifications are put before the Film and Literature Board of Review, which re-examines the publication and determines its classification as it sees fit. If someone disagrees with the Board of Review’s decision on a point of law, they can appeal to the High Court.

### **Interim restriction orders**

Interim restriction orders are intended to be a short-term restriction on a publication, used during classification reviews or appeals. They are rare, and are intended to allow quick action if the New Zealand public is vulnerable to the publication under review. Currently, these orders function like a censorship, making it illegal to possess, distribute, import, display, or supply the publication. An interim restriction order ends when it is revoked by the authority that imposed it, or when the review or appeal of that publication is completed or determined.

An interim restriction order can be imposed if the High Court, a High Court judge, or the President of the Board of Review, is satisfied that it is in the public interest to do so.

### **Re-drafting the bill**

We are recommending amendments to the structure and drafting of the bill to ensure the intended policy is reflected. Our recommended amendments would set out the four types of interim restriction orders more clearly.

It should be noted that we are recommending an amendment, in clause 1, to change the bill’s name to the “Films, Videos, and Publications Classification (Interim Restriction Orders) Amendment Bill”. We consider that this name would more accurately reflect the content of the bill.

### **Changes to offence provisions**

We were advised that the principal Act contains offence provisions that do not envisage the more flexible interim restriction orders proposed in this bill. The existing penalty for breaching an interim restriction order would also apply to breaching any of the new types of orders.

We recommend adding clause 6, to insert new section 133A in the principal Act. This new clause would introduce new offence provisions for interim restriction orders.

## **Appendix**

### **Committee process**

The Films, Videos, and Publications Classification (Interim Restriction Order Classification) Amendment Bill was referred to the committee on 7 December 2016. The closing date for submissions was 2 February 2017. We received and considered four submissions from interested groups and individuals. We heard oral evidence from two submitters.

We received advice from the Ministry of Justice.

### **Committee membership**

Sarah Dowie (Chairperson)

Jacinda Ardern

Chris Bishop

Paul Foster-Bell

Marama Fox

Jono Naylor

Denis O'Rourke

Maureen Pugh

Metiria Turei

Louisa Wall



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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted unanimously

~~text deleted unanimously~~



*Chris Bishop*

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Member's Bill

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**The Parliament of New Zealand enacts as follows:**

<b>1</b>	<b>Title</b> This Act is the Films, Videos, and Publications Classification (Interim Restriction Order Classification <u>Orders</u> ) Amendment Act <b>2016</b> .	
<b>2</b>	<b>Commencement</b> This Act comes into force on the day after the date on which it receives the Royal assent.	5
<b>3</b>	<b>Principal Act</b> This Act amends the Films, Videos, and Publications Classification Act 1993 (the <b>principal Act</b> ).	10

**Part 1**  
**Substantive amendments to principal Act**

<b>4</b>	<del><b>Section 49A inserted (Interim restriction order classification)</b></del> After section 49, insert:	
<b>49A</b>	<del><b>Interim restriction order classification</b></del> The President of the Board may, when making an interim restriction order under section 49, restrict the availability of a publication to any 1 or more of the following classes: (a) persons who have attained a specified age not exceeding 18 years: (b) specified persons or classes of persons: (c) use for 1 or more specified purposes:	15
<b>5</b>	<del><b>Section 67A inserted (Interim restriction on appeal classification)</b></del> After section 67, insert:	
<b>67A</b>	<del><b>Interim restriction on appeal classification</b></del> The High Court or a Judge of that court may, when making an interim restriction order under section 67, restrict the availability of a publication to any 1 or more of the following classes: (a) persons who have attained a specified age not exceeding 18 years: (b) specified persons or classes of persons: (c) use for 1 or more specified purposes:	25
		30



**4 Section 49 replaced (Interim restriction orders)**

Replace section 49 with:

**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. 5
- (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 10
- (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: 15
- (i) section 123(1)(c), (d), or (e):
- (ii) section 127:
- (iii) section 129; or
- (b) restricts the availability of the publication to— 20
- (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)**). 25
- (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. 30

**5 Section 67 replaced (Imposition of interim restrictions on appeal)**

Replace section 67 with:

**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. 35

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- (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.

**6 New section 133A inserted (Contravention of interim restriction order)**

After section 133, insert:

**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.

## Part 2

### Consequential amendments to principal Act

- 7** Section 29 amended (Character of publications arising in court proceedings) 5  
In section 29(1), after “section 116”, insert “but not including proceedings under **section 67**”.
- 8** Section 107 amended (Inspector may seize publications)  
(1) In section 107(2)(b)(ii), replace “publication is being publicly displayed in contravention of section 130 or section 133” with “public display of the publication constitutes an offence under section 130, **133**, or **133A**”. 10  
(2) In section 107(3)(b), replace “poster is being publicly displayed in contravention of section 130 or section 133” with “public display of the poster constitutes an offence under section 130, **133**, or **133A**”.
- 9** Section 133 replaced (Contravention of serial publication order or interim restriction order) 15  
Replace section 133 with:
- 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,— 20  
(a) in the case of an individual, \$3,000; or  
(b) in the case of a body corporate, \$10,000.
- 10** Section 144 amended (Attorney-General’s consent required for private prosecutions of certain publications offences) 25  
Replace section 144(d) with:  
(d) **section 133** (contravention of serial publication order);  
(e) **section 133A** (contravention of interim restriction order).

### Legislative history

10 November 2016  
7 December 2016

Introduction (Bill 205–1)  
First reading and referral to Justice and Electoral Committee