

FILMS, VIDEOS, AND PUBLICATIONS CLASSIFICATION AMENDMENT BILL (NO. 3)

AS REPORTED FROM THE COMMERCE COMMITTEE

COMMENTARY

Recommendation

The Commerce Committee has examined the Films, Videos, and Publications Classification Amendment Bill (No. 3) and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Films, Videos, and Publications Classification Amendment Bill (No. 3) was referred to the Commerce Committee on 12 November 1998. The closing date for submissions was 28 February 1999. We received and considered seven submissions from interested groups and individuals. We heard five submissions orally. The hearing of evidence took twenty minutes and consideration took ten minutes.

We received advice from the Ministry of Justice and the Department of Internal Affairs.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

Background

The bill makes two amendments to the Films, Videos, and Publications Classification Act 1993 (the Act). First, it provides greater flexibility in relation to the terms of appointment of the Chief Censor of Film and Literature, the Deputy Chief Censor and classification officers. Second, it removes the requirement for videos previously labelled under the Video Recordings Act 1987 to be re-labelled under the Act by 1 April 1999.

Limit on terms of appointment to be repealed

The Act currently limits the term of office for classification officers (including the Chief Censor and Deputy Chief Censor) to a maximum of two consecutive terms,

each of no more than three years. After that, a person may not hold any such position again for at least three years.

These restrictions have proven to be inflexible and have hindered the operation of the Classification Office. The restrictions have reduced the ability to:

- retain experienced classification officers
- develop a career structure
- form of a pool of part-time classification officers to assist with fluctuations in the volume of work handled.

The bill amends the Act to allow classification officers to be employed for any number of terms, provided that no term exceeds three years. The three-year limit on the length of any term addresses the possibility of any one person continuing to hold a position while having a negative effect on the activities of the Classification Office.

Bill repeals the requirement that all videos supplied to the public after 1 April 1999 be labelled under the Act

The Act currently provides that videos labelled under the Video Recordings Act 1987 can not be supplied to the public on or after 1 April 1999 unless they have been re-labelled under the Act.

The objective of the re-labelling requirement was to ensure that, after a transitional period, there would be a single, comprehensive labelling system in operation. However, due to the excessive compliance costs to the video industry, this bill repeals the re-labelling requirements relating to videos. This means there will be two ranges of labels on videos. However, the nature of the video industry and the limited durability of videos will mean that the number of videos labelled under the Video Recordings Act 1987 will continue to decrease.

Although we accept that it is desirable to have consistent labelling across the media, in the current situation that could only be achieved at great cost. The benefit of one labelling system is limited as labels issued under the Video Recordings Act 1987 are substantially similar to labels issued under the Act. Also, the two ranges of labels have existed since 1993 and there has been no evidence of any public harm or confusion resulting from this. The removal of the requirement for video suppliers to re-label videos is in line with the Government's commitment to minimise unnecessary compliance costs.

Current labelling practice already means that no Video Recordings Act 1987 labels have been issued since the Act came into force. Over time very few videos bearing Video Recordings Act 1987 labels will remain for the following reasons:

- all new video titles are labelled under the Act
- if a video labelled under the Video Recordings Act 1987 requires a replacement label it is issued with the equivalent label under the Act
- where new copies of a video labelled under the Video Recordings Act 1987 enter the country, either through a new distribution channel or as replacements for worn-out older copies, they are labelled under the Act
- suppliers usually stop stocking older videos for which there is little demand
- it is expected that DVDs (Digital Versatile Discs) will continue to replace videos; already a growing number of video titles are released on DVD, all of which, due to the recent development of this medium, are classified and labelled under the Act.

There appears to be no evidence of confusion during the past five years of the two ranges of labels being in use. However, to minimise any potential future public

confusion the bill requires that video outlets display material explaining and comparing classifications and ratings.

Enactment of bill by 1 April 1999 is desirable to prevent breaches of the Act

The Film and Video Labelling Body and the New Zealand Video Dealers Association are concerned about the possibility of the bill being enacted after 1 April 1999. If the bill is not in force by this date suppliers who offer to the public videos that have not been re-labelled under the Act will be in breach of the Act.

The Department of Internal Affairs, whose inspectors are responsible for enforcing the Act, has advised that addressing labelling issues is not regarded as an enforcement priority. They advised that this will continue to be so after 31 March 1999 in regards to videos that are the subject of the bill. Such videos have been rated or classified and labelled under the Video Recordings Act 1987 and provide a suitable level of consumer information. However, if a complaint is received from a member of the public it would have to be considered. In such a situation a decision would need to be made as to whether prosecution was appropriate given all the circumstances.

Although it is unlikely that a delay in passing the bill will result in the prosecution of any video suppliers, in the interests of maintaining the certainty and stature of classification and censorship law, we recommend that the House of Representatives make this amendment a legislative priority and pass it into law before 31 March 1999.

Amendments to regulations to be included in the bill

After the bill is passed, several changes to the Films, Videos, and Publications Classification Regulations 1994 will be needed to allow the continued supply of videos labelled under the Video Recordings Act 1987 and to require suppliers to display explanatory material. The necessary amendments to the regulations are included in the bill to allow them to be made at the same time as the bill.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

New (Unanimous)

Subject to this Act,

Text inserted unanimously

~~(Subject to this Act,)~~

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Tony Ryall

FILMS, VIDEOS, AND PUBLICATIONS CLASSIFICATION AMENDMENT (NO. 3)

ANALYSIS

Title	5. Repeal
1. Short Title and commencement	6. Saving
2. Term of office	
3. Regulations	
4. Regulations relating to transitional matters	
4A. Amendments to Films, Videos, and Publications Classification Regulations 1994	

SCHEDULE

Amendments To Films, Videos, and Publications Classification Regulations 1994

A BILL INTITULED

An Act to amend the Films, Videos, and Publications Classification Act 1993

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title and commencement**—(1) This Act may be cited as the Films, Videos, and Publications Classification Amendment Act (No. 3) 1998, and is part of the Films, Videos, and Publications Classification Act 1993* (“the principal Act”).

10 (2) Except as provided in section 4A(2), this Act comes into force on the day after the date on which it receives the Royal assent.

2. Term of office—The principal Act is amended by repealing section 81, and substituting the following section:

15 “81. (1) A person appointed under section 80 may be appointed for any period not exceeding 3 years, and may from time to time be reappointed for any period not exceeding 3 years.

“**(2) Subsection (1)** is subject to section 83.”

Cf. 1983, No. 130, s. 5 (2A), (2B); 1987, No. 85, s. 6 (4), (4A)

*1993, No. 94

Amendments: 1997, No. 44; 1998, No. 45

3. Regulations—(1) Section 149 of the principal Act is amended by inserting, after paragraph (j), the following paragraph:

“(ja) Requiring the display, on premises where films to which regulations made under **paragraph (nd)** apply are supplied to the public or offered for supply to the public, of posters and advertising material explaining the ratings and classifications under the Video Recordings Act 1987, and their equivalent ratings and classifications under this Act:”.

(2) Section 149 of the principal Act is amended by inserting, after paragraph (nc), the following paragraph:

“(nd) Providing, in relation to any film in respect of which a decision has been made under the Video Recordings Act 1987, that unless a label has been issued under this Act in respect of the film, compliance with all or any of the requirements of the Video Recordings Act 1987 with respect to the labelling of a video recording is regarded as compliance with all or any of the requirements of this Act with respect to the public supply of that film:”.

4. Regulations relating to transitional matters—The principal Act is amended by repealing section 176, and substituting the following section:

“176. (1) Without limiting section 149, regulations may be made under that section prescribing transitional and savings provisions relating to the coming into force of this Act, which may be in addition to or in place of any of the provisions of this Part.

“(2) Without limiting the generality of **subsection (1)**, any such regulations may provide, in relation to any film in respect of which a decision has been made under the Films Act 1983, that for a specified transitional period or until the sooner issue of a label under this Act in respect of the film, compliance with all or any of the requirements of the Films Act 1983 with respect to the exhibition of a film is regarded as compliance with all or any of the requirements of this Act with respect to the public exhibition of that film.”

New (Unanimous)

4A. Amendments to Films, Videos, and Publications Classification Regulations 1994—

(1) The Films, Videos, and Publications Classification Regulations 1994 (S.R. 1998/15) are amended in the manner set out in the **Schedule**.

(2) The following amendments to the Films, Videos, and Publications Classification Regulations 1994, as set out in the **Schedule**, come into force on **1 May 1999**:

(a) The amendments to regulations 42 and 46:

(b) The revocation of subclauses (3) and (4) of regulation 65.

(3) The amendment, by this section, of the Films, Videos, and Publications Classification Regulations 1994 is without prejudice to any power to amend or revoke those regulations.

5. Repeal—(1) The Films, Videos, and Publications Classification Amendment Act 1997 is consequentially repealed.

(2) The repeal, by this section, of the Films, Videos, and Publications Classification Amendment Act 1997—

(a) Does not affect the amendments or repeals made by sections 2 to 4 of that Act:

(b) Does not affect the saving effected by section 5 of that Act.

6. Saving—(1) This section applies to all regulations in force at the commencement of this section—

(a) That were made under section 149 of the principal Act under any power conferred by section 176 of the principal Act (as it existed immediately before the commencement of this section); and

(b) That, after the commencement of this section, could be made (wholly or in part) under **paragraph (ja) or paragraph (nd)** of section 149 of the principal Act (as amended by **section 3** of this Act).

(2) All regulations to which this section applies continue in force after the commencement of this section as if they had been validly made under section 149 of the principal Act (as amended by **section 3** of this Act) without reliance on any power conferred by section 176 of the principal Act.

(3) The fact that any regulations are continued in force by this section is without prejudice to any power to amend or revoke those regulations.

New (Unanimous)

SCHEDULE Section 4A AMENDMENTS TO FILMS, VIDEOS, AND PUBLICATIONS CLASSIFICATION REGULATIONS 1994	
Provision of Regulations	Amendment
Regulation 42	By inserting, after subclause (1), the following subclause: “(1A) Every occupier of premises (not being a private residence) where films to which regulation 65 applies are supplied to the public or offered for supply to the public must, in accordance with subclause (2), publicly display on those premises a notice showing— “(a) The ratings and classifications set out in the third column of the Fourth Schedule (which are the ratings and classifications under the Video Recordings Act 1987); and “(b) Their equivalent ratings and classifications under the Act, as set out in the second column of that Schedule.”
Regulation 46	By inserting, after subclause (2), the following subclause: “(2A) Every person commits an offence against these regulations who, being the occupier of premises (other than a private residence) where films to which regulation 65 applies are supplied to the public or offered for supply to the public,— “(a) Fails without reasonable excuse to display the notice required by subclause (1A) of regulation 42; or “(b) Without reasonable excuse displays any such notice otherwise than in accordance with the requirements of subclause (2) of that regulation.”

New (Unanimous)

SCHEDULE— <i>continued</i>	
AMENDMENTS TO FILMS, VIDEOS, AND PUBLICATIONS CLASSIFICATION REGULATIONS 1994— <i>continued</i>	
Provision of Regulations	Amendment
Regulation 65	By omitting from subclause (2) the words “Where, before the earlier of the 1st day of April 1999 or the sooner issue of a label under the Act in respect of the film,”, and substituting the words “Unless a label has been issued under the Act in respect of the film, if”.
Regulation 66	By revoking subclauses (3) and (4). By revoking this regulation, and substituting the following regulation: “66. Expiry of regulation 64 —Regulation 64 expires with the close of 31 March 1999.”