

Films, Videos, and Publications Classification Amendment Regulations 2005

Pursuant to section 149 of the Films, Videos, and Publications Classification Act 1993, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Contents

		Page
1	Title	2
2	Commencement	3
3	Interpretation	3
4	New Part 2 heading substituted	3
Part2		
‘Labelling’.		
5	New regulations 11 to 11C substituted	4
	11 Labelling body must submit film to Classification Office if film’s trailer is inconsistent with its main feature	4
	11A Steps referred to in regulation 11(3)	4
	11B When film’s trailer is inconsistent with its main feature	5
	11C Symbols used in table in regulation 11B	5
6	New heading before regulation 16 substituted	6
	<i>Issue of labels in respect of films.</i>	
7	Issue of additional labels	6
8	New heading and regulations 18A and 18B inserted	6
	<i>Issue of labels in respect of other publications that are classified as restricted publications</i>	
	18A Labels issued at direction of Classification Office or Board of Review under section 36A(2) of Act	6

	18B	Additional copies of label issued under regulation 18A	7
9		New heading before regulation 19 substituted <i>Affixing of labels to films.</i>	8
10		New heading and regulations 20A and 20B inserted <i>Affixing, etc, of labels for other publications that are classified as restricted publications</i>	8
	20A	Labels must be affixed, etc, in manner specified in relevant condition under section 27(4)(a) of Act	8
	20B	Further requirements as to affixing, etc, of labels	8
11		Search warrants	9
12		New regulations 61 to 61C substituted	9
	61	Labelling body must submit film to Classification Office if film includes inconsistent new material	9
	61A	Steps referred to in regulation 61(4)	10
	61B	When new material is inconsistent with film	10
	61C	Symbols used in table in regulation 61B	11
13		New heading to Schedule 1 substituted <i>Labels for films</i>	11
14		New Schedule 1A inserted	11
15		Schedule 2 amended	11
		Schedule 1	12
		New Schedule 1A inserted	
		Schedule 2	12
		New form 2 substituted	

1 Title

- (1) These regulations are the Films, Videos, and Publications Classification Amendment Regulations 2005.
- (2) In these regulations, the Films, Videos, and Publications Classification Regulations 1994¹ are called “the principal regulations”.

¹ SR 1994/189

2 Commencement

- (1) Regulations 1 and 2 (which are preliminary provisions), regulation 7 (which relates to the issue of additional labels for films), and regulations 11 and 15 and Schedule 2 (which relate to the form of search warrants), come into force on 11 March 2005.
- (2) Regulations 3, 5, and 12 (which relate to when the labelling body must submit a film to the Classification Office for classification because the film's trailer is inconsistent with its main feature) come into force on 7 April 2005.
- (3) Regulations 4, 6, 8 to 10, 13, and 14 and Schedule 1 (which relate to the issue of labels for restricted publications (other than films)) come into force on 22 May 2005.

3 Interpretation

Regulation 2(1) of the principal regulations is amended by revoking the definitions of main feature and trailer, and substituting, in their appropriate alphabetical order, the following definitions:

“**main feature**, in relation to a film,—

“(a) means the item on that film whose title is the title under which the film is solely or mainly marketed; but

“(b) if there is a series of items on that film with the same running time (or very similar running times) and the same general title, and that title is the title under which the film is solely or mainly marketed, means the first of those items

“**trailer** means any material that is—

“(a) included on a film; but

“(b) not part of the main feature on that film.”

4 New Part 2 heading substituted

The principal regulations are amended by revoking the Part 2 heading, and substituting the following heading:

**“Part 2
““Labelling”.”**

5 New regulations 11 to 11C substituted

- (1) The principal regulations are amended by revoking regulation 11, and substituting the following regulations:

“11 Labelling body must submit film to Classification Office if film’s trailer is inconsistent with its main feature

- “(1) The labelling body must not assign a rating to a film, but must submit the film to the Classification Office in accordance with section 12(1) of the Act, if, after assessing under subclause (2) the 1 or more trailers (if any) included on the film, the labelling body is satisfied any of them is inconsistent with the main feature on that film.

- “(2) On receiving an application under section 9(1) of the Act, the labelling body, as well as assessing, in accordance with these regulations, the main feature on the film in respect of which the application is made, must assess the 1 or more trailers (if any) included on that film to determine whether any of those trailers is inconsistent with that main feature.

- “(3) A trailer included on a film is inconsistent with the main feature on that film for the purposes of this regulation if taking the steps in regulation 11A would result in the main feature and trailer having the ratings or classifications in one of the rows of the table set out in regulation 11B.

- “(4) This regulation overrides regulations 8 to 10.

“11A Steps referred to in regulation 11(3)

- “(1) One step referred to in regulation 11(3) is for the labelling body to identify the rating it proposes to assign to the main feature or, if the film is one to which regulation 15(2)(b) applies, the classification given by the Classification Office or the Board of Review to the main feature on the film.

- “(2) The other step referred to in regulation 11(3) is for the labelling body—

- “(a) to assess the trailer—

- “(i) under regulation 10 as a film in its own right; and

- “(ii) having regard to the matters specified in regulation 10(2)); and
- “(b) as a result of that assessment, to either—
 - “(i) assign the trailer a rating; or
 - “(ii) be satisfied, in accordance with regulation 10(5), of the classification the trailer would be likely to have if it were classified by the Classification Office.

“11B When film’s trailer is inconsistent with its main feature

The table referred to in regulation 11(3) is as follows:

row	main feature	trailer
1	G	PG or M or R
2	PG	M or R
3	M	R
4	R	R

“11C Symbols used in table in regulation 11B

- “(1) The rating symbols in regulation 11B represent (as provided by regulation 13) the ratings specified in regulation 12(1), and those symbols apply regardless of the description (if any) that has been, or would be, assigned under regulation 14 or under section 36(3)(b) of the Act.
- “(2) The symbol ‘R’ in regulation 11B represents every kind of classification as a restricted publication (regardless of the restriction that has been or would be imposed by the Classification Office or the Board of Review), and that symbol applies regardless of—
 - “(a) the description (if any) that has been or would be assigned under regulation 15(2)(b)(i) and (4) or under section 36(3)(b) of the Act; and
 - “(b) the conditions (if any) that have been or would be imposed pursuant to section 27 of the Act.”

- (2) The principal regulations are consequentially amended by revoking regulation 3 (meaning of consistent in character with main feature).

6 New heading before regulation 16 substituted

The principal regulations are amended by revoking the heading before regulation 16, and substituting the following heading:

“Issue of labels in respect of films.”

7 Issue of additional labels

Regulation 18 of the principal regulations is amended by revoking subclause (2), and substituting the following subclauses:

- “(2) The labelling body must issue the appropriate number (as defined in subclause (3)) of copies of a label if it—
- “(a) receives an application under subclause (1) in respect of a film; and
 - “(b) is satisfied that the film is identical in content with the film in respect of which the label was originally issued; and
 - “(c) has been paid the fee it has set for the application.
- “(3) The appropriate number is the number that the labelling body is satisfied is necessary for the copies of the film in respect of which the application is made.”

8 New heading and regulations 18A and 18B inserted

The principal regulations are amended by inserting, after regulation 18, the following heading and regulations:

*“Issue of labels in respect of other publications
that are classified as restricted publications*

“18A Labels issued at direction of Classification Office or Board of Review under section 36A(2) of Act

- “(1) Where, under section 36A(2) of the Act, the Classification Office directs the labelling body to issue a label in respect of a publication (other than a film), the labelling body must issue in respect of the publication a label that specifies the classifica-

tion given by the Classification Office or the Board of Review to the publication.

- “(2) A label issued under subclause (1) must be in the form of, and coloured the same as, diagram A in Schedule 1A if it is issued in respect of a publication that the Classification Office or the Board of Review has classified as objectionable except if the availability of the publication is restricted to persons who have attained a specified age.
- “(3) A label issued under subclause (1) must be in the form of, and coloured the same as, diagram B in Schedule 1A if it is issued in respect of a publication that the Classification Office or the Board of Review has classified as 1 of the following:
- “(a) objectionable except if the availability of the film is restricted to specified persons or classes of persons; or
 - “(b) objectionable except if the film is used for 1 or more specified purposes; or
 - “(c) objectionable except in 2 or more of the circumstances stated in section 23(2)(c) of the Act.

“18B Additional copies of label issued under regulation 18A

- “(1) Where, in accordance with regulation 18A, the labelling body has issued a label in respect of a publication, a person who distributes publications or supplies or exhibits publications to the public may apply to the labelling body for the issue of copies of that label for the purpose of labelling any copy of the publication in respect of which the original label was issued.
- “(2) The labelling body must issue the appropriate number (as defined in subclause (3)) of copies of a label if it—
- “(a) receives an application under subclause (1) in respect of a publication; and
 - “(b) is satisfied that the publication is identical in content with the publication in respect of which the label was originally issued; and
 - “(c) has been paid the fee it has set for the application.
- “(3) The appropriate number is the number that the labelling body is satisfied is necessary for the copies of the publication in respect of which the application is made.”

9 New heading before regulation 19 substituted

The principal regulations are amended by revoking the heading before regulation 19, and substituting the following heading:

“Affixing of labels to films.”

10 New heading and regulations 20A and 20B inserted

The principal regulations are amended by inserting, after regulation 20, the following heading and regulations:

“Affixing, etc, of labels for other publications that are classified as restricted publications

“20A Labels must be affixed, etc, in manner specified in relevant condition under section 27(4)(a) of Act

“(1) A label issued in respect of a publication under regulation 18A or regulation 18B must, when the publication is on public display, be—

“(a) affixed to the publication in the manner specified by the Classification Office or the Board of Review in the relevant condition imposed pursuant to section 27(4)(a) of the Act; or

“(b) brought in some other, more practical or convenient way to the attention of persons to whom the publication is displayed in the manner specified by the Classification Office or the Board of Review in the relevant condition imposed pursuant to section 27(4)(a) of the Act.

“(2) Every label required to be affixed to a publication, or brought to the attention of persons to whom the publication is displayed, as provided in subclause (1), must be of the following size:

“(a) not less than 2.5 cm in height; and

“(b) not less than 5.5 cm in width.

“20B Further requirements as to affixing, etc, of labels

“(1) This subclause applies when a label (the cancelled label)—

“(a) is affixed to a publication, or brought to the attention of persons to whom the publication is displayed, as provided in regulation 20A; and

- “(b) is deemed, under section 36A(3) of the Act, to be cancelled.
- “(2) When subclause (1) applies, a new label affixed to the publication, or brought to the attention of persons to whom the publication is displayed, as provided in regulation 20A, must be affixed to the publication, or brought to the attention of persons to whom the publication is displayed, in such a way that the cancelled label is no longer visible.
- “(3) Where it is not possible to comply with subclause (2), the cancelled label must be permanently obscured by some other means, or must be removed.”

11 Search warrants

Regulation 47 of the principal regulations is amended by omitting the words “of the Act shall”, and substituting the words “or section 109A or section 109B of the Act must”.

12 New regulations 61 to 61C substituted

The principal regulations are amended by revoking regulation 61, and substituting the following regulations:

“61 Labelling body must submit film to Classification Office if film includes inconsistent new material

- “(1) This regulation applies to a film (the film) to which this Part applies if,—
- “(a) in accordance with regulation 58, an application is made under section 9(1) of the Act for the issue of a label in respect of the film; and
- “(b) there is included on the film material (the new material) that was not included on the film when a rating or classification was given to the film under—
- “(i) the Films Act 1983; or (as the case requires)
- “(ii) the Video Recordings Act 1987.
- “(2) The labelling body must not issue a label in respect of the film (including the new material), but must submit the film (including the new material) to the Classification Office in accordance with section 12(1) of the Act if, after assessing under subclause (3) the new material, the labelling body is satisfied it is inconsistent with the film (excluding the new material).

- “(3) The labelling body must, as well as determining the equivalent rating or classification of the film (excluding the new material) under the Act, assess the new material to determine whether it is inconsistent with the film (excluding the new material).
- “(4) The new material is inconsistent with the film (excluding the new material) for the purposes of this regulation if taking the steps in regulation 61A would result in the film (excluding the new material) and new material having the ratings or classifications in one of the rows of the table set out in regulation 61B.
- “(5) This regulation overrides regulations 58 and 59.

“61A Steps referred to in regulation 61(4)

- “(1) One step referred to in regulation 61(4) is for the labelling body to determine the equivalent rating or classification of the film (excluding the new material) under the Act.
- “(2) The other step referred to in regulation 61(4) is for the labelling body—
- “(a) to assess the new material—
- “(i) under regulation 10 as a film in its own right; and
- “(ii) having regard to the matters specified in regulation 10(2); and
- “(b) as a result of that assessment, to either—
- “(i) assign the new material a rating; or
- “(ii) be satisfied, in accordance with regulation 10(5), of the classification the new material would be likely to have if it were classified by the Classification Office.

“61B When new material is inconsistent with film

The table referred to in regulation 61(4) is as follows:

row	film	new material
1	G	PG or M or R
2	PG	M or R

row	film	new material
3	M	R
4	R	R

“61C Symbols used in table in regulation 61B

- “(1) The rating symbols in regulation 61B represent (as provided by regulation 13) the ratings specified in regulation 12(1), and those symbols apply regardless of the description (if any) that would be assigned under regulation 14 or under section 36(3)(b) of the Act.
- “(2) The symbol ‘R’ in regulation 61B represents every kind of classification as a restricted publication (regardless of the restriction that has been or would be imposed by the Classification Office or the Board of Review), and that symbol applies regardless of—
- “(a) the description (if any) that would be assigned under regulation 15(2)(b)(i) and (4) or under section 36(3)(b) of the Act; and
- “(b) the conditions (if any) that would be imposed pursuant to section 27 of the Act.”

13 New heading to Schedule 1 substituted

The principal regulations are amended by revoking the heading to the Schedule 1, and substituting the following heading:
“Labels for films”

14 New Schedule 1A inserted

The principal regulations are amended by inserting, after Schedule 1, the Schedule 1A set out in Schedule 1 of these regulations.

15 Schedule 2 amended

Schedule 2 of the principal regulations is amended by revoking form 2, and substituting the form 2 set out in Schedule 2 of these regulations.

Schedule 1 r 14
New Schedule 1A inserted
Schedule 1A r 18A(2), (3)
**Labels for other publications that are
classified as restricted publications**

Diagram A

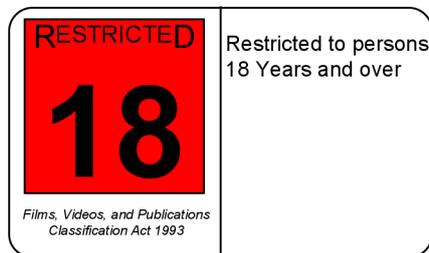
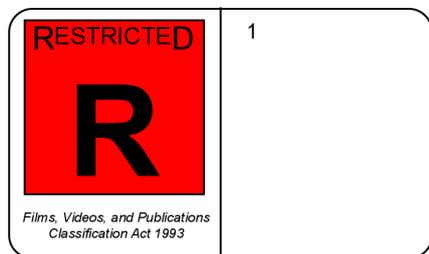


Diagram B



Note

- 1 Insert the restriction imposed by the Office of Film and Literature Classification or the Film and Literature Board of Review

Schedule 2 r 15
New form 2 substituted
"Form 2" r 47
"Search warrant"

“

Form 2—*continued*

Section 109 or 109A or 109B, Films, Videos, and Publications Classification Act 1993

No/20....

To every Inspector of Publications; and every member of the police

I am satisfied on an application in writing made on oath under section 109 (*or* 109A *or* 109B) of the Films, Videos, and Publications Classification Act 1993 (the **Act**) by [*full name*], an Inspector of Publications (*or* a member of the police), that there are reasonable grounds for believing that there is in (*or* on) [*describe place or thing that may be searched pursuant to the warrant*] the following property [*insert description of the kind of property to be searched for and seized*], being—

***if search warrant issued by District Court Judge, Registrar, etc, under section 109 of Act**

*An objectionable publication that there are reasonable grounds to believe is being kept for the purpose of being so dealt with as to constitute an offence against section 123 (*or* section 124 *or* section 127 *or* section 129) of the Act.

or

*A thing that there are reasonable grounds to believe will be evidence of the commission of an offence against section 123 (*or* section 124 *or* section 127 *or* section 129) of the Act.

or

*A thing that there are reasonable grounds to believe is intended to be used for the purpose of committing an offence against section 123 (*or* section 124 *or* section 127 *or* section 129) of the Act.

*Delete if inapplicable.

***if search warrant issued by District Court Judge under section 109A of Act**

*A publication that there are reasonable grounds to believe is being so dealt with as to constitute an offence against section 126 (*or* section 131A) of the Act.

Form 2—*continued*

or

*A thing that there are reasonable grounds to believe will be evidence of the commission of an offence against section 126 (or section 131A) of the Act.

*I am, as required by section 109A(1)(b) of the Act, also satisfied, on that application in writing made on oath, and after having had regard to the matters specified in paragraphs (a) to (c) of section 109A(2) of the Act, that in all the circumstances it is reasonable to issue this warrant.

*Delete if inapplicable.

***if search warrant issued by Registrar, etc, under section 109B of Act**

*A publication that there are reasonable grounds to believe is being so dealt with as to constitute an offence against section 126 (or section 131A) of the Act.

or

*A thing that there are reasonable grounds to believe will be evidence of the commission of an offence against section 126 (or section 131A) of the Act.

*I am, as required by section 109B(a)(i) to (iii) of the Act, also satisfied, on that application in writing made on oath, that, in the particular case,—

- (i) that all reasonable efforts have been made to obtain a warrant under section 109A of the Act; and
- (ii) that no District Court Judge is available to deal with an application under section 109A of the Act; and
- (iii) that delaying a search until a warrant under section 109A could be obtained would create a real risk that the purpose of the search would be frustrated.

*Delete if inapplicable.

This warrant authorises you, at any time by day or night within [*specify the period during which the warrant may be executed, which may not exceed 14 days from the date of issue*] days of the date of the issue of this warrant to enter and search the said

In exercising the authority conferred by this warrant, you may—

Form 2—*continued*

- (a) use such assistants as may be reasonable in the circumstances for the purpose of the entry and search; and
- (b) use such force as is reasonable in the circumstances for the purpose of effecting entry, and for breaking open anything in or on the place searched; and
- (c) search for and seize the property described in this warrant.

This warrant is subject to the following special conditions: [*specify*].

The power to enter and search any place or thing pursuant to this warrant may be exercised on one occasion only.

When executing this warrant you are required to comply with sections 112 and 113(1) of the Act.

If you seize any property pursuant to this warrant, you are required to comply with section 113(2) of the Act.

Dated atthisday of20....

District Court Judge
(*or* Justice of the Peace
or Community Magistrate
or Registrar (not being a member of the police)).

Notes

- (1) A District Court Judge, Justice, Community Magistrate, or Registrar may issue a warrant (for an offence against section 123 or section 124 or section 127 or section 129 of the Act) under section 109 of the Act.
- (2) Only a District Court Judge may issue a warrant (for an offence against section 126 or section 131A of the Act) under section 109A of the Act.
- (3) A Justice, Community Magistrate, or Registrar may issue a warrant (for an offence against section 126 or section 131A of the Act) under section 109B of the Act, but only if satisfied, on an application in writing made on oath, of the matters specified in section 109B(a) and (b) of the Act. Those matters include that, in the particular case,—

Form 2—*continued*

- (i) that all reasonable efforts have been made to obtain a warrant under section 109A of the Act; and
- (ii) that no District Court Judge is available to deal with an application under section 109A of the Act; and
- (iii) that delaying a search until a warrant under section 109A could be obtained would create a real risk that the purpose of the search would be frustrated.

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations amend the Films, Videos, and Publications Classification Regulations 1994 in the light of the enactment of the Films, Videos, and Publications Classification Amendment Act 2005. The amendments, which come into force on the following dates, relate to the following matters:

- 11 March 2005—the issue of additional labels for films and the form of search warrants:
- 7 April 2005—when the labelling body must submit a film to the Classification Office for classification because the film’s trailer is inconsistent with its main feature:
- 22 May 2005—the issue of labels for restricted publications (other than films).

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 10 March 2005.
