Films, Videos, and Publications Classification Amendment Act 2005

Public Act	2005 No 2
Date of assent	21 February 2005
Commencement	see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

(1) This Act is the Films, Videos, and Publications Classification Amendment Act 2005.

(2) In this Act, the Films, Videos, and Publications Classification Act 1993 is called "the principal Act".

2 Commencement

(1) The following sections (which relate to the issue under the principal Act of labels for restricted publications (other than

films)) come into force on the day that is 3 months after the date on which this Act receives the Royal assent:

(a) section 3(1):

(b) sections 12 to 14:

(c) sections 20 and 21.

(2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Amendments to principal Act

3 Interpretation

(1) The definition of **label** in section 2 of the principal Act is amended by inserting, after the word "film", the words "or other publication".

(2) Section 2 of the principal Act is amended by repealing paragraph (c) of the definition of **publication**, and substituting the following paragraphs:

"(c) a paper or other thing that has printed or impressed upon it, or otherwise shown upon it, 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words:

"(d) a thing (including, but not limited to, a disc, or an electronic or computer file) on which is recorded or stored information that, by the use of a computer or other electronic device, is capable of being reproduced or shown as 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words".

4 Meaning of objectionable

(1) Section 3 of the principal Act is amended by inserting, after subsection (1), the following subsections:

"(1A) Without limiting subsection (1), a publication deals with a matter such as sex for the purposes of that subsection if—

"(a) the publication is or contains 1 or more visual images of 1 or more children or young persons who are nude or partially nude; and

"(b) those 1 or more visual images are, alone, or together with any other contents of the publication, reasonably capable of being regarded as sexual in nature.

"(1B) Subsection (1A) is for the avoidance of doubt."

(2) Section 3(3) and (4) of the principal Act is amended by inserting, after the word "should" in both places where it occurs, the words "in accordance with section 23(2)".

5 New sections 3A to 3D inserted

The principal Act is amended by inserting, after section 3, the following sections:

"3A **Publication may be age-restricted if it contains highly offensive language likely to cause serious harm**

"(1) A publication to which subsection (2) applies may be classified as a restricted publication under section 23(2)(c)(i).

"(2) This subsection applies to a publication that contains highly offensive language to such an extent or degree that the availability of the publication would be likely, if not restricted to persons who have attained a specified age, to cause serious harm to persons under that age.

"(3) In this section, **highly offensive language** means language that is highly offensive to the public in general.

"3B **Publication may be age-restricted if likely to be injurious to public good for specified reasons**

"(1) A publication to which subsection (2) applies may be classified as a restricted publication under section 23(2)(c)(i).

"(2) This subsection applies to a publication that contains material specified in subsection (3) to such an extent or degree that the availability of the publication would, if not restricted to persons who have attained a specified age, be likely to be injurious to the public good for any or all of the reasons specified in subsection (4).

"(3) The material referred to in subsection (2) is material that—

"(a) describes, depicts, expresses, or otherwise deals with—

"(i) harm to a person's body whether it involves infliction of pain or not (for example, self-mutilation or similarly harmful body modification) or self-inflicted death; or

"(ii) conduct that, if imitated, would pose a real risk of serious harm to self or others or both; or

"(iii) physical conduct of a degrading or dehumanising or demeaning nature; or

"(b) is or includes 1 or more visual images—

"(i) of a person's body; and

"(ii) that, alone, or together with any other contents of the publication, are of a degrading or dehumanising or demeaning nature.

"(4) The reasons referred to in subsection (2) are that the general levels of emotional and intellectual development and maturity of persons under the specified age mean that the availability of the publication to those persons would be likely to—

"(a) cause them to be greatly disturbed or shocked; or

"(b) increase significantly the risk of them killing, or causing serious harm to, themselves, others, or both; or

"(c) encourage them to treat or regard themselves, others, or both, as degraded or dehumanised or demeaned.

"3C **Procedure for classification under sections 3A and 3B**

In determining whether to classify a publication as a restricted publication in accordance with section 3A or section 3B, the Classification Office must consider the matters specified in paragraphs (a) to (f) of section 3(4).

"3D **How sections 3A and 3B relate to sections 3 and 23(2)(c)**

Sections 3A and 3B are not limited by section 3, and do not limit the Classification Office's power under sections 3 and 23(2)(c) to classify a publication as a restricted publication."

6 Transitional provision

(1) Sections 3A to 3D of the principal Act (inserted by section 5 of this Act) and section 23(2)(c)(i) of the principal Act (as amended by section 11 of this Act) (the **new provisions**) apply only to—

(a) publications submitted or referred to the Classification Office or Board of Review under the principal Act before the commencement of this section, but not classified by the Classification Office or the Board (whether for a first time or by way of reconsideration) before that commencement; and

(b) publications submitted or referred to the Classification Office or Board of Review under the principal Act on or after the commencement of this section.

(2) No person may be convicted of an offence against section 125(1) or section 126(1) of the principal Act in respect of conduct before the commencement of this section if the conviction would rely solely on a classification made under any of the new provisions.

(3) Without limiting section 42(3) of the principal Act, the Chief Censor may be satisfied under that subsection that there are special circumstances justifying reconsideration of a decision made in respect of a publication if the Chief Censor considers that the decision may be altered because of the new provisions.

7 Whether publication objectionable a matter of expert judgment

(1) The heading to section 4 of the principal Act is amended by omitting the words "**Whether publication objectionable**", and substituting the words "**Classification of publications**".

(2) Section 4(1) of the principal Act is amended by inserting, after the words "is objectionable", the words "or should in accordance with section 23(2) be given a classification other than objectionable".

8 Submission of films by labelling body

Section 12 of the principal Act is amended by inserting, after subsection (1), the following subsection:

"(1A) However, the labelling body is not required by subsection (1) to submit a film to the Classification Office if—

"(a) an item on the film has been classified under this Act as a restricted publication; and

"(b) all other material included on the film is material to which the labelling body would, in accordance with regulations made under this Act, be permitted to assign a rating; and

"(c) the labelling body may, without a direction of the Classification Office under section 36, but in accordance with regulations made under this Act, issue in respect of

the film a label containing the classification of, and any description assigned to, the item."

9 Submission of publications by others

Section 13(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

"(ab) the Commissioner of Police:".

10 New section 19 substituted

(1) The principal Act is amended by repealing section 19, and substituting the following section:

"19 **Notification of submission**

"(1) This section applies if a person (the **submitter**) submits a publication to the Classification Office under section 13.

"(2) The Chief Censor must immediately determine the notice of the submission that is to be given to any person (other than the submitter) who the Chief Censor reasonably believes should be given notice of the submission by reason of that person's interest in the publication (being an interest as owner, maker, distributor, or publisher of the publication).

"(3) The Chief Censor may, before the publication has been classified by the Classification Office, determine—

"(a) that notice of the submission is to be given to any other specified person or class of persons, in a manner and within a time the Chief Censor specifies:

"(b) that the fact that the submission has been made is to be publicised, in a manner and within a time the Chief Censor specifies.

"(4) Having determined under subsection (2) or subsection (3) that notice is to be given or that a fact is to be publicised, unless subsection (5) applies the Chief Censor must direct the submitter to give that notice or to publicise that fact.

"(5) The Chief Censor must arrange for the Classification Office to give that notice or to publicise that fact if satisfied that giving that notice or publicising that fact would place an undue burden on the submitter."

(2) Section 20(1)(c) of the principal Act is consequentially amended by omitting the words "paragraph (a) or paragraph

(b)(i) of section 19 of this Act", and substituting the words "section 19(4) or (5)".

(3) A direction given under section 19(a) or (b) (as that section read immediately before the commencement of this section) must be treated as if it were given under section 19(4) (as substituted by this section).

11 Examination and classification

(1) Section 23(2) of the principal Act is amended by omitting the words "section 3 of this Act", and substituting the words "sections 3 to 3D".

(2) Section 23(2)(c)(i) of the principal Act is amended by inserting, after the words "a specified age", the words "not exceeding 18 years".

12 Conditions relating to display of restricted publications

(1) Section 27(4) of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

"(a) that, when the publication is on public display, the classification given to the publication must be shown by way of a label—

"(i) issued in accordance with a direction under section 36A(2); and either

"(ii) affixed to the publication in a manner specified by the Classification Office; or

"(iii) brought in some other, more practical or convenient way to the attention of persons to whom the publication is displayed in a manner specified by the Classification Office:".

(2) A condition imposed pursuant to section 27(4)(a) of the principal Act (as that section read immediately before the commencement of this section, and in subsection (3)(a) called the **former provision**) must, after the commencement of this section, be treated as having been imposed pursuant to section 27(4)(a) (as substituted by subsection (1) of this section).

(3) However, a condition to which subsection (2) applies must be treated as requiring the classification given to the publication concerned to be shown,—

(a) if the Classification Office specified a manner under the former provision, in that manner; and

(b) in every other case, in any manner the person who publicly displays the publication concerned thinks fit.

13 New section 36A inserted

The principal Act is amended by inserting, after section 36, the following section:

"36A **Issue of labels in respect of other publications that are classified as restricted publications**

"(1) This subsection applies to a publication (other than a film) if the Classification Office has—

"(a) examined the publication and classified it as a restricted publication; and

"(b) imposed pursuant to section 27(4)(a) a condition requiring the classification given to the publication to be shown when it is on public display.

"(2) If subsection (1) applies to a publication, the Classification Office must direct the labelling body to issue in respect of the publication a label that specifies the classification given to the publication.

"(3) Where, under subsection (2), or following an order under section 55(1)(da), the Classification Office directs the labelling body to issue a label in respect of a publication, each of the following things is, for the purposes of this Act, deemed to be cancelled:

"(a) any label previously issued in respect of the publication by the labelling body; and

"(b) any previous direction by the Classification Office to the labelling body to issue a label in respect of the publication."

14 Decisions of Classification Office

Section 38(2) of the principal Act is amended by repealing paragraph (d), and substituting the following paragraphs:

"(d) in the case of a film, the terms of any direction given to the labelling body under section 36 to issue a label in respect of that film:

"(e) in the case of a publication (other than a film) that is the subject of a condition imposed pursuant to section

27(4)(a), the terms of any direction given to the labelling body under section 36A(2) to issue a label in respect of that publication."

15 Decisions to be conclusive evidence

Section 41(2) of the principal Act is amended by omitting the words "recorded in any list produced in accordance with section 40 of this Act", and substituting the words ", in accordance with section 40(3), first made open to inspection by the public in a list produced in accordance with section 40(1)".

16 Reconsideration of publications

Section 42(1) and (2) of the principal Act is amended by omitting the words "recorded in any list produced in accordance with section 40 of this Act" in both places where they occur, and substituting in each case the words ", in accordance with section 40(3), first made open to inspection by the public in a list produced in accordance with section 40(1)".

17 Right of review

(1) Section 47 of the principal Act is amended by repealing subsection (3), and substituting the following subsections:

"(3) Every application for the leave of the Secretary under subsection (2)(e) must—

"(a) be made in the prescribed manner; and

"(b) be lodged with the Secretary before the deadline specified in subsection (3A).

"(3A) The deadline referred to in subsection (3)(b) is the end of ordinary office hours on the 20th working day after the day on which the relevant decision of the Classification Office is, in accordance with section 40(3), first made open to inspection by the public in a list produced in accordance with section 40(1)."

(2) The amendment in this section applies only in respect of a decision of the Classification Office made on or after the commencement of this section.

18 Applications for review

(1) Section 48(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

"(b) be lodged with the Secretary before the relevant deadline specified in section 48A; and".

(2) Section 48 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) On receiving under this section an application for review the Secretary must, if satisfied that it complies with subsection (1), forward it forthwith to the President of the Board."

(3) The amendments in this section and section 19 apply only in respect of a decision of the Classification Office made on or after the commencement of this section.

19 New section 48A inserted

(1) The principal Act is amended by inserting, after section 48, the following section:

"48A **Deadline for lodging applications for review**

The deadline referred to in section 48(1)(b) is,—

"(a) if the person concerned requires the leave of the Secretary under section 47(2)(e) in order to seek the review, the end of ordinary office hours on whichever is the later of the following:

"(i) the 5th working day after the day on which that leave is granted by the Secretary; or

"(ii) the 30th working day after the day on which the relevant decision of the Classification Office is, in accordance with section 40(3), first made open to inspection by the public in a list produced in accordance with section 40(1); and

"(b) in every other case, the end of ordinary office hours on the 30th working day after the day on which the relevant decision of the Classification Office is, in accordance with section 40(3), first made open to inspection by the public in a list produced in accordance with section 40(1)."

(2) Section 31 of the principal Act is consequentially amended by repealing paragraphs (c) and (d), and substituting the following paragraphs:

"(c) if no application for a review of that decision is lodged pursuant to section 47 before the relevant deadline specified in section 48A, that deadline; or

"(d) if an application for a review of that kind is lodged before that deadline, the Board has made a determination in relation to that review."

20 Decision of Board

Section 55(1) of the principal Act is amended by inserting, after paragraph (d), the following paragraph:

"(da) where the review is in respect of a publication (other than a film) and the Board imposes a condition pursuant to section 27(4)(a), order the Classification Office to direct the labelling body, in accordance with section 36A(2), to issue a label in respect of the publication; and".

21 Functions of labelling body

Section 71 of the principal Act is amended by inserting, after paragraph (b), the following paragraphs:

"(ba) to issue, on an application under section 9(1) in respect of the film and in accordance with regulations made under this Act, but without a direction of the Classification Office under section 36, labels (containing the classification of, and any description assigned to, the item) in respect of a film—

"(i) an item on which has been classified under this Act as a restricted publication; and

"(ii) all other material on which is material to which the labelling body would, in accordance with regulations made under this Act, be permitted to assign a rating:

"(bb) to issue, at the direction of the Classification Office under section 36 or section 36A(2), and in accordance with regulations made under this Act, labels in respect of the following publications:

"(i) a film to which section 36(1) or (2) applies:

"(ii) a publication (other than a film) that is the subject of a condition imposed pursuant to section 27(4)(a):".

22 Continuation in office after term expires

Section 95(b) of the principal Act is amended by omitting the word "reappointed", and substituting the word "appointed".

23 New sections 109 to 109C substituted

(1) The principal Act is amended by repealing section 109, and substituting the following sections:

"109 **Search warrants for offences against specified sections (other than sections 126 and 131A)**

A District Court Judge, Justice, or Community Magistrate, or a Registrar (not being a member of the police) may, on an application in writing made on oath, issue a search warrant if satisfied that there are reasonable grounds for believing that there is in or on any place or thing—

"(a) any 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; or

"(b) any thing that there are reasonable grounds to believe will be evidence of the commission of an offence of that kind; or

"(c) any thing that there are reasonable grounds to believe is intended to be used for the purpose of committing an offence of that kind.

"109A **Search warrants from District Court Judges for offences against sections 126 and 131A**

"(1) A District Court Judge may, on an application in writing made on oath, issue a search warrant if satisfied—

"(a) that there are reasonable grounds for believing that there is in or on any place or thing—

"(i) a publication that there are reasonable grounds to believe is being so dealt with as to constitute an offence against section 126 (offences involving knowledge in relation to restricted publications); or

"(ii) any thing that there are reasonable grounds to believe will be evidence of the commission of an offence against section 126; or

"(iii) an objectionable publication that there are reasonable grounds to believe is being so dealt with

as to constitute an offence against section 131A (offences relating to possession of objectionable publications and involving knowledge); or

"(iv) any thing that there are reasonable grounds to believe will be evidence of the commission of an offence against section 131A; and

"(b) that in all the circumstances it is reasonable to do so.

"(2) In considering whether to issue a warrant under this section, the District Court Judge must have regard to—

"(a) the nature and seriousness of the alleged offending to which the application relates; and

"(b) any information provided by the applicant about the importance, to the investigation of the offence, of the issue of a warrant; and

"(c) any other matter the Judge considers relevant.

"109B **Search warrants from Registrars, etc, for offences against section 126 or section 131A**

A Justice, Community Magistrate, or Registrar (not being a member of the police) may, on an application in writing made on oath, issue a search warrant if satisfied—

"(a) that, in the particular case,—

"(i) that all reasonable efforts have been made to obtain a warrant under section 109A; but

"(ii) that no District Court Judge is available to deal with an application under section 109A; and

"(iii) that delaying a search until a warrant under section 109A could be obtained would create a real risk that the purpose of that search would be frustrated; and

"(b) that there are reasonable grounds for believing that there is in or on any place or thing—

"(i) a publication that there are reasonable grounds to believe is being so dealt with as to constitute an offence against section 126 (offences involving knowledge in relation to restricted publications); or

"(ii) any thing that there are reasonable grounds to believe will be evidence of the commission of an offence against section 126; or

"(iii) an objectionable publication that there are reasonable grounds to believe is being so dealt with as to constitute an offence against section 131A (offences relating to possession of objectionable publications and involving knowledge); or

"(iv) any thing that there are reasonable grounds to believe will be evidence of the commission of an offence against section 131A.

"109C **Who may apply for search warrants**

An application under section 109 or section 109A or section 109B may be made by an Inspector or a member of the police."

(2) Section 2 of the principal Act is amended by omitting from the definition of **search warrant** the words "of this Act", and substituting the words "or section 109A or section 109B".

(3) Section 111(2) of the principal Act is consequentially amended by repealing paragraph (d), and substituting the following paragraph:

"(d) to search for and seize anything referred to—

"(i) in section 109(a) to (c), if the warrant is issued under section 109; or

"(ii) in section 109A(1)(a)(i) or (ii), if the warrant is issued under section 109A in respect of an offence against section 126; or

"(iii) in section 109A(1)(a)(iii) or (iv), if the warrant is issued under section 109A in respect of an offence against section 131A; or

"(iv) in section 109B(b)(i) or (ii), if the warrant is issued under section 109B in respect of an offence against section 126; or

"(v) in section 109B(b)(iii) or (iv), if the warrant is issued under section 109B in respect of an offence against section 131A."

(4) Section 118(5) of the principal Act is consequentially amended by omitting the words "of this Act", and substituting the words "or section 109A or section 109B".

(5) Section 198 of the Summary Proceedings Act 1957 is amended by inserting, after subsection (1), the following subsection:

"(1A) Despite subsection (1), no search warrant may be issued under this section in respect of an offence against a provision of the Films, Videos, and Publications Classification Act 1993."

24 New section 118A inserted

The principal Act is amended by inserting, after section 118, the following section:

"118A **Application of Customs and Excise Act 1996**

"(1) Sections 137, 139, 140, 143, 144, 148, 149B, 152, and 165 to 167 of the Customs and Excise Act 1996 apply to offences against this Act concerning the importation or exportation of objectionable publications to the same extent as those sections apply to offences against section 209 of the Customs and Excise Act 1996 concerning the importation or exportation of objectionable publications.

"(2) Section 161 of the Customs and Excise Act 1996 applies to an investigation of an offence against this Act concerning the importation or exportation of objectionable publications to the same extent as that section applies to an investigation of an offence against that Act; and section 162 of that Act applies accordingly.

"(3) A Customs officer may arrest a person without warrant in accordance with section 174(1) of the Customs and Excise Act 1996, as if the person were suspected of an offence against section 209 of that Act, if the Customs officer has reasonable cause to suspect that the person has committed an offence against section 124(1) of this Act involving—

"(a) the importation into New Zealand of an objectionable publication for the purposes of supply or distribution; or

"(b) the supply or distribution, by way of exportation from New Zealand, of an objectionable publication.

"(4) Section 174(3) and (4) of the Customs and Excise Act 1996 applies to an arrest by a Customs officer under subsection (3).

"(5) Nothing in this section limits the application of any provisions of the Customs and Excise Act 1996 that confer powers (for example, powers relating to prohibited goods)."

25 New sections 122 and 122A substituted

The principal Act is amended by repealing section 122, and substituting the following sections:

"122 **Meaning of distribute in sections 123 to 132**

"(1) In sections 123 to 132, unless the context otherwise requires, **distribute**, in relation to a publication, means—

"(a) to deliver, give, or offer the publication; or

"(b) to provide access to the publication (for example, to provide access by means of a public data network to digital content that is or includes the publication).

"(2) However, a person does not **distribute** a publication unless the person—

"(a) intends, or knows of, the act of distribution; and

"(b) knows what, in general terms, the publication is or contains.

"(3) To avoid doubt, to **distribute**, in relation to a publication, does not include to facilitate access to the publication by providing only some or all of the means necessary for—

"(a) delivery of the publication in physical form; or

"(b) transmission (other than by broadcasting) of the contents of the publication.

"(4) Examples of a person facilitating access to a publication in the ways referred to in subsection (3) are—

"(a) a postal operator or courier providing only some or all of the means necessary for delivering the publication in physical form; and

"(b) a network operator or service provider providing only a network or facility through which the contents of the publication are transmitted.

"122A **Definitions for section 122**

In section 122,—

"**courier** means a person carrying on business as a courier

"**digital content**—

"(a) means information that is kept on a data storage device and accessed, or available for access, through a public data network; but

"(b) does not include email, or information that is transmitted in the form of a broadcasting service

"**network operator** has the same meaning as in section 3(1) of the Telecommunications (Interception Capability) Act 2004

"**postal operator** has the same meaning as in section 2(1) of the Postal Services Act 1998

"**public data network** has the same meaning as in section 5 of the Telecommunications Act 2001

"**service provider**—

"(a) means a person providing Internet access, email access, or both of those facilities, by means of a public data network; but

"(b) does not include a network operator."

26 Offences of strict liability relating to objectionable publications

(1) Section 123(1) of the principal Act is amended by repealing paragraphs (c) to (f), and substituting the following paragraphs:

"(c) imports into New Zealand an objectionable publication for the purposes of supply or distribution to any other person; or

"(d) supplies or distributes (including in either case by way of exportation from New Zealand) an objectionable publication to any other person; or

"(e) has in that person's possession, for the purposes of supply or distribution to any other person, an objectionable publication; or

"(f) in expectation of payment or otherwise for gain, or by way of advertisement, displays or exhibits an objectionable publication to any other person."

(2) Section 123 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) Every person who commits an offence against subsection (1) is liable,—

"(a) in the case of an individual, to a fine not exceeding $10,000:

"(b) in the case of a body corporate, to a fine not exceeding $30,000."

(3) Section 123(4) of the principal Act is consequentially amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:

"(a) supplied (within the meaning of that term in section 2) for the purposes of any of paragraphs (b) to (e) of subsection (1); or

"(b) distributed (within the meaning of that term in section 122) for the purposes of any of paragraphs (b) to (e) of subsection (1); or

"(c) imported into New Zealand for the purposes of paragraph (c) of subsection (1),—".

27 Offences involving knowledge in relation to objectionable publications

Section 124 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) Every person who commits an offence against subsection (1) is liable,—

"(a) in the case of an individual, to imprisonment for a term not exceeding 10 years:

"(b) in the case of a body corporate, to a fine not exceeding $200,000."

28 New section 124A inserted

The principal Act is amended by inserting, after section 124, the following section:

"124A **Where distribution, importation, etc, not an offence**

"(1) Nothing in section 123 or section 124 makes it an offence for a person referred to in any of paragraphs (a) to (l) of section 131(4) to do any or all of the following things for the purpose of, and in connection with, his or her official duties:

"(a) import a publication into New Zealand (whether with the involvement of an overseas official or not):

"(b) export a publication from New Zealand to an overseas official:

"(c) distribute a publication to a person referred to in any of paragraphs (a) to (l) of section 131(4) if that person takes possession of the publication for the purpose of, and in connection with, his or her official duties:

"(d) make a copy of a publication for the purposes of distribution of the kind specified in paragraph (c):

"(e) be in possession of a publication for the purposes of distribution of the kind specified in paragraph (c).

"(2) In subsection (1), **overseas official** means a person in a country other than New Zealand who holds an office in that country that corresponds to an office referred to in section 131(4), and who is exercising or performing the duties, functions, or powers of that office.

"(3) This subsection applies to a charge under section 123 or section 124 that the defendant—

"(a) distributed a publication; or

"(b) made a copy of a publication for the purposes of distribution to any other person; or

"(c) possessed a publication for the purposes of distribution to any other person.

"(4) It is a defence to a charge to which subsection (3) applies if the defendant proves that the act to which that charge relates was done, in good faith, in accordance with any of paragraphs (a) to (f) of section 131(5)."

29 Exhibition to persons under 18

(1) Section 127 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

"(2) Every person who commits an offence against subsection (1) is liable,—

"(a) in the case of an individual, to a fine not exceeding $10,000:

"(b) in the case of a body corporate, to a fine not exceeding $30,000."

(2) Section 127 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

"(5) Every person who commits an offence against subsection (4) is liable,—

"(a) in the case of an individual, to imprisonment for a term not exceeding 10 years:

"(b) in the case of a body corporate, to a fine not exceeding $200,000."

30 Offences in public place

(1) Section 129 of the principal Act is amended by inserting, after subsection (2), the following subsection:

"(2A) Every person who commits an offence against subsection (1) is liable,—

"(a) in the case of an individual, to a fine not exceeding $10,000:

"(b) in the case of a body corporate, to a fine not exceeding $30,000."

(2) Section 129 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:

"(4) Every person who commits an offence against subsection (3) is liable,—

"(a) in the case of an individual, to imprisonment for a term not exceeding 1 year or to a fine not exceeding $20,000:

"(b) in the case of a body corporate, to a fine not exceeding $50,000."

31 New section 131A inserted

(1) The principal Act is amended by inserting, after section 131, the following section:

"131A **Offences relating to possession of objectionable publications and involving knowledge**

"(1) Every person commits an offence who does any act that constitutes an offence against section 131(1), knowing or having reasonable cause to believe that the publication is objectionable.

"(2) Every person who commits an offence against subsection (1) is liable,—

"(a) in the case of an individual, to imprisonment for a term not exceeding 5 years or to a fine not exceeding $50,000:

"(b) in the case of a body corporate, to a fine not exceeding $100,000."

(2) Section 144(1) of the principal Act is consequentially amended by inserting, after the expression "section 131", the words "or section 131A".

32 New section 132A inserted

The principal Act is amended by inserting, after section 132, the following section:

"132A **Aggravating factor to be taken into account in sentencing, etc, for certain publications offences**

"(1) This section applies to an offence (the **offence**) if it is committed after the commencement of this section and it is an offence against—

"(a) section 124(1); or

"(b) section 127(4); or

"(c) section 129(3); or

"(d) section 131A(1); or

"(e) section 209(1A) of the Customs and Excise Act 1996.

"(2) In sentencing or otherwise dealing with an offender for the offence, the court must take into account as an aggravating factor the extent to which any publication that was the subject of the offence is objectionable because it does any or all of the following:

"(a) promotes or supports, or tends to promote or support, the exploitation of children, or young persons, or both, for sexual purposes:

"(b) describes, depicts, or otherwise deals with sexual conduct with or by children, or young persons, or both:

"(c) exploits the nudity of children, or young persons, or both.

"(3) In deciding for the purposes of subsection (2) to what extent (if any) a publication is objectionable because it does any or all of the things specified in subsection (2)(a) to (c), the court must have regard,—

"(a) if there is a subsisting decision of the Classification Office, or of the Board, to the reasons for the decision given by the Classification Office, under section 38, or by the Board, under section 55; and

"(b) if the publication has been referred to the Classification Office under section 29(1) or section 41(3), to the report provided by the Classification Office to the court under section 30.

"(4) Nothing in this section affects the application of the Sentencing Act 2002 in respect of the offence."

33 New section 141A inserted

(1) The principal Act is amended by inserting, after section 141, the following section:

"141A **Offences punishable on conviction on indictment**

Every offence against any of the following sections of this Act is punishable on conviction on indictment:

"(a) section 124(1) (offences involving knowledge in relation to objectionable publications):

"(b) section 127(4) (offence of exhibiting or displaying objectionable publication to person under age of 18 years knowing or having reasonable cause to believe that publication is objectionable):

"(c) section 131A(1) (offences relating to possession of objectionable publications and involving knowledge)."

(2) Section 142 of the principal Act is consequentially amended by omitting the words "shall be", and substituting the words "and that is not an offence against a section specified in section 141A(a) to (c) is".

34 New sections 145A to 145C inserted

(1) The principal Act is amended by inserting, after section 145, the following sections:

"145A **Extraterritorial jurisdiction for certain offences as required by Optional Protocol**

"(1) In this section and sections 145B and 145C,—

"**child pornography** means—

"(a) a representation, by any means, of a person who is or appears to be under 18 years of age engaged in real or simulated explicit sexual activities; or

"(b) a representation of the sexual parts of a person of that kind for primarily sexual purposes

"**Optional Protocol** means the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted by the General Assembly of the United Nations at New York on 25 May 2000

"**relevant offence** means an offence against—

"(a) section 124(1); or

"(b) section 127(4); or

"(c) section 129(3); or

"(d) section 131A(1); or

"(e) section 209(1A) of the Customs and Excise Act 1996.

"(2) Even if the acts or omissions alleged to constitute the offence occurred wholly outside New Zealand, proceedings may be brought for a relevant offence that involves child pornography if the person to be charged—

"(a) has been found in New Zealand; and

"(b) has not been extradited on the grounds that he or she is a New Zealand citizen.

"(3) This section does not affect the application of any section referred to in paragraphs (a) to (e) of the definition of **relevant offence** in subsection (1) in respect of—

"(a) acts that occurred wholly within New Zealand; or

"(b) an offence that, under section 7 of the Crimes Act 1961, is deemed to be committed in New Zealand; or

"(c) acts to which section 8 of that Act applies; or

"(d) acts that, under section 8A of that Act, are deemed to have taken place within New Zealand.

"145B **Attorney-General's consent required where jurisdiction claimed under section 145A**

"(1) Proceedings for a relevant offence cannot be brought in a New Zealand court against a person without the Attorney-General's consent, if jurisdiction over the person is claimed by virtue of section 145A.

"(2) A person over whom jurisdiction is claimed by virtue of section 145A may be arrested for a relevant offence, or a warrant for the person's arrest for the offence may be issued and executed, and the person may be remanded in custody or on bail, even though the Attorney-General's consent to the bringing of proceedings against the person has not been obtained.

"145C **Offences deemed to be included in extradition treaties**

"(1) For the purposes of the Extradition Act 1999 and any Order in Council in force under section 15 or section 104 of that Act, every relevant offence that involves child pornography is deemed to be an offence described in any extradition treaty—

"(a) concluded before the commencement of section 34 of the Films, Videos, and Publications Classification Amendment Act 2005; and

"(b) for the time being in force between New Zealand and any foreign country that is a party to the Optional Protocol.

"(2) A person whose surrender is sought from New Zealand in respect of an act that amounts to an offence deemed by subsection (1) to be an offence described in an extradition treaty is liable to be surrendered in accordance with the Extradition Act 1999 and the applicable extradition treaty, whether the act occurred before or after the commencement referred to in subsection (1)(a).

"(3) However, subsection (2) does not apply in respect of an act that, had it occurred within the jurisdiction of New Zealand, would not, at the time that it occurred, have constituted an offence under New Zealand law.

"(4) A certificate given and signed by the Minister of Foreign Affairs and Trade that a foreign country is a party to the Optional Protocol is, in the absence of proof to the contrary, sufficient evidence of that fact.

"(5) For the purposes of this section, **child pornography**, **Optional Protocol**, and **relevant offence** have the meanings given to them by section 145A(1), and **foreign country** includes a territory—

"(a) for whose international relations the Government of a foreign country is responsible; and

"(b) to which the extradition treaty and the Optional protocol extend."

(2) Section 101A(2) of the Extradition Act 1999 is amended by adding the following paragraph:

"(i) section 145C of the Films, Videos, and Publications Classification Act 1993."

35 Regulations

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

"(ha) prescribing, as contemplated by sections 12(1A) and 71(ba), the circumstances in which, on an application

under section 9(1) in respect of the film, the labelling body may, without a direction of the Classification Office under section 36 in respect of the film, issue a label (containing the classification of, and any description given to, the item) in respect of a film—

"(i) an item on which has been classified under this Act as a restricted publication; and

"(ii) all other material on which is material to which the labelling body would, in accordance with regulations made under this Act, be permitted to assign a rating:".

36 Decisions under Indecent Publications Act 1963

Section 152(4) of the principal Act is amended by omitting the words "recorded in any list produced in accordance with section 40 of this Act", and substituting the words "in accordance with section 40(3), first made open to inspection by the public in a list produced in accordance with section 40(1)".

37 Classification decisions under Video Recordings Act 1987

Section 161(5) of the principal Act is amended by omitting the words "recorded in any list produced in accordance with section 40 of this Act", and substituting the words "in accordance with section 40(3), first made open to inspection by the public in a list produced in accordance with section 40(1)".

38 Classification decisions under Films Act 1983

Section 168(5) of the principal Act is amended by omitting the words "recorded in any list produced in accordance with section 40 of this Act", and substituting the words "in accordance with section 40(3), first made open to inspection by the public in a list produced in accordance with section 40(1)".

Part 2
Amendments to other Acts

Amendments to Customs and Excise Act 1996

39 Interpretation

Section 2(1) of the Customs and Excise Act 1996 is amended by repealing the definitions of **electronic publication**, **exportation**, **prohibited exports**, and **prohibited imports**, and substituting, in their appropriate alphabetical order, the following definitions:

"**electronic publication** means a thing (including, but not limited to, a disc, or an electronic or computer file) on which is recorded or stored information that, by the use of a computer or other electronic device, is capable of being reproduced or shown as 1 or more (or a combination of 1 or more) images, representations, signs, statements, or words

"**exportation**,—

"(a) except where otherwise expressly provided, means any shipment in any craft for transportation to a point outside New Zealand; and

"(b) in relation to an electronic publication referred to in section 56(1)(a), includes the sending of the electronic publication from New Zealand by any means (other than by broadcasting) to a point outside New Zealand

"**prohibited exports** means goods the exportation of which is prohibited, whether conditionally or unconditionally, by or under section 56

"**prohibited imports** means goods the importation of which is prohibited, whether conditionally or unconditionally, by or under section 54".

40 Prohibited imports

Section 54(1) of the Customs and Excise Act 1996 is amended by repealing paragraph (aa), and substituting the following paragraph:

"(aa) all publications as defined in section 2 of the Films, Videos, and Publications Classification Act 1993 that are objectionable within the meaning of that Act in the hands of all persons and for all purposes; and all other indecent or obscene articles; or".

41 Prohibited exports

Section 56 of the Customs and Excise Act 1996 is amended by repealing subsection (1), and substituting the following subsections:

"(1) It is unlawful to export from New Zealand—

"(a) all publications as defined in section 2 of the Films, Videos, and Publications Classification Act 1993 that are objectionable within the meaning of that Act in the hands of all persons and for all purposes; and

"(b) goods the exportation of which is prohibited by an order under subsection (2).

"(1A) Electronic publications the exportation of which is prohibited by subsection (1)(a) must be treated as if they were goods for the purposes of this Act (except for section 12 of the Goods and Services Tax Act 1985 which is deemed by section 1(3) of that Act to be part of this Act)."

42 Offences in relation to importation or exportation of prohibited goods

(1) Section 209(1)(a), (d), and (e) of the Customs and Excise Act 1996 is amended by omitting the words "under section 54 of this Act" in each place where they occur, and substituting in each case the words "by or under section 54".

(2) Section 209(1)(b) of the Customs and Excise Act 1996 is amended by omitting the words "an Order in Council made under section 56(2) of this Act", and substituting the words "or under section 56".

(3) Section 209 of the Customs and Excise Act 1996 is amended by inserting, after subsection (1), the following subsections:

"(1A) Every person commits an offence who does any act referred to in paragraph (c) or paragraph (e) of subsection (1) in respect of an objectionable publication.

"(1B) In this section, **objectionable publication** means, as the case requires, a publication as defined in section 2 of the Films, Videos, and Publications Classification Act 1993—

"(a) the importation of which is prohibited by or under section 54; or

"(b) the exportation of which is prohibited by or under section 56."

(4) Section 209(1)(c) and (e) of the Customs and Excise Act 1996 is amended by inserting, after the word "goods" in each place where it occurs, the words "(other than objectionable publications)".

(5) Section 209 of the Customs and Excise Act 1996 is amended by adding the following subsections:

"(5) Every person who commits an offence against subsection (1A) is liable on conviction on indictment,—

"(a) in the case of an individual, to imprisonment for a term not exceeding 5 years; or

"(b) in the case of a body corporate, to a fine not exceeding $100,000."

"(6) Section 132A of the Films, Videos, and Publications Classification Act 1993 (which specifies an aggravating factor to be taken into account in sentencing, etc, for certain publications offences) applies to an offence against subsection (1A) of this section, and an offence of that kind is also a **relevant offence** as defined in section 145A(1) of that Act (which relates to extraterritorial jurisdiction)."

43 Publications imported in course of official duties

(1) The heading to section 209A of the Customs and Excise Act 1996 is amended by inserting, after the word "**imported**", the words "**or exported**".

(2) Section 209A of the Customs and Excise Act 1996 is amended by repealing subsection (1), and substituting the following subsection:

"(1) Nothing in section 209 makes it an offence for a New Zealand official to do either or both of the following things for the purpose of, and in connection with, his or her official duties:

"(a) import a publication (whether with the involvement of an overseas official or not):

"(b) export a publication (for example, an electronic publication) to an overseas official."

44 First Schedule amended

The First Schedule of the Customs and Excise Act 1996 is amended by repealing the first item.

Amendment to Mutual Assistance in Criminal Matters Act 1992

45 Schedule amended to refer to Optional Protocol

The Schedule of the Mutual Assistance in Criminal Matters Act 1992 is amended by inserting, in its appropriate numerical order, the following row:

29	The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, adopted by the General Assembly of the United Nations at New York on 25 May 2000	An offence— (a) against any of the following sections of the Films, Videos, and Publications Classification Act 1993: *section* — *subject matter* 124(1) — knowingly making or supplying objectionable publications, etc 127(4) — knowing exhibition to persons under 18 129(3) — knowing distribution of objectionable publication in public place 131A(1) — knowingly having possession of objectionable publication; and (b) that involves child pornography (as defined in section 145A(1) of that Act) An offence— (a) against the following section of the Customs and Excise Act 1996: *section* — *subject matter* 209(1A) — knowing importation or exportation of objectionable publications; and (b) that involves child pornography (as defined section 145A(1) of the Films, Videos, and Publications Classification Act 1993)

Amendments to Summary Proceedings Act 1957

46 Part II of First Schedule amended

(1) Part II of the First Schedule of the Summary Proceedings Act 1957 is amended by adding the following, in the appropriate columns, to the item relating to the Customs and Excise Act 1996:

	209(1A)	Offences relating to importation or exportation of objectionable publications

(2) Part II of the First Schedule of the Summary Proceedings Act 1957 is amended by inserting, in its appropriate alphabetical order, the following item:

The Films, Videos, and Publications Classification Act 1993	124(1)	Offences involving knowledge in relation to objectionable publications
	127(4)	Offence of exhibiting or displaying objectionable publication to person under age of 18 years knowing or having reasonable cause to believe that publication is objectionable
	131A(1)	Offences relating to possession of objectionable publications and involving knowledge

Legislative history

2 December 2003	Introduction (Bill 91–1)
2 March 2004	First reading and referral to Government Administration Committee
30 August 2004	Reported from Government Administration Committee (Bill 91–2)
8 February 2005	Second reading
15 February 2005	Committee of the whole House (Bill 91–3)
16 February 2005	Third reading
21 February 2005	Royal assent

This Act is administered in the Ministry of Justice.