

33. Title: *Playguy*, Vol. 5, No. 8. Publisher: Playguy Magazine Inc.
34. Title: *Playguy*, Vol. 5, No. 9. Publisher: Playguy Magazine Inc.
35. Title: *Playguy*, Vol. 6, No. 11. Publisher: Playguy Magazine Inc.
36. Title: *Playguy*, Vol. 7, No. 2. Publisher: Playguy Magazine Inc.
37. Title: *Playguy*, Vol. 5, No. 5. Publisher: Playguy Magazine Inc.
38. Title: *Playguy*, Vol. 5, No. 11. Publisher: Playguy Magazine Inc.
39. Title: *Playguy*, Vol. 5, No. 12. Publisher: Playguy Magazine Inc.
40. Title: *Playguy*, Vol. 7, No. 4. Publisher: Playguy Magazine Inc.
41. Title: *Playguy*, Vol. 7, No. 5. Publisher: Playguy Magazine Inc.
42. Title: *Playguy*, Vol. 7, No. 6. Publisher: Playguy Magazine Inc.
43. Title: *Playguy*, Vol. 8, No. 6. Publisher: Playguy Magazine Inc.
44. Title: *Playguy*, Vol. 8, No. 3. Publisher: Playguy Magazine Inc. (2 copies.)
45. Title: *Exposures*. Publisher: Rho Delta Press.
46. Title: *Macho Collection*, Vol. 1, No. 1. Publisher: Unknown.
47. Title: *House Master*. Publisher: Unknown.
48. Title: *Wes*. Publisher: Unknown.
49. Title: *Abducted*. Publisher: Falcon Presentations.
50. Title: *John Holmes Superdong*, Vol. 1, No. 1. Publisher: Unknown.
51. Title: *Male Call*, No. 5. Publisher: Undercounter Publications.

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*The Standards Act 1965—Draft New Zealand Standard  
Specification Available for Comment*

PURSUANT to subsection (3) of section 23 of the Standards Act 1965, notice is hereby given that the following draft New Zealand standard specification is being circulated.

Number of Title of Specification

DZ 8716 Specification for measurement of the bulk of wool. \$5.00

This draft Standard sets out the method for measuring the bulk of scoured wool using a bulkometer, the wool being in the form of corings taken from bales of wool. This device places a known pressure onto a sample of wool and gives the volumetric density. It is envisaged that this method will be adopted for use in Wool Testing Laboratories. The procedure for the preparation of the wool before measurement is also described.

The method has been developed by the Wool Research Organisation of New Zealand and the Standard has been written in response to an increasing need for objective measurement in the wool industry.

All persons who may be affected by this publication and who desire to comment thereon, may obtain copies at the price shown, from the Standards Association of New Zealand, Wellington Trade Centre, 181-187 Victoria Street (or Private Bag), Wellington.

NOTE—Payment must accompany all requests for drafts.

The closing date for receipt of comment is 18 February 1987.

Dated at Wellington this 19th day of November 1986.

DENYS R. M. PINFOLD,

Director, Standards Association of New Zealand.

(S.A. 114/2/8)

*Indecent Publications Tribunal Minority Decision*

INDECENCY is a subject on which there is unlikely to be consensus. Members of the public have different views as to what is indecent. Judicial opinion, in both the High Court and the Court of Appeal in the 3 decisions that have reached those courts in the last 10 years, has reflected divergent points of view as to what is the appropriate test to be applied. The Indecent Publications Tribunal has nearly always been able to reach a unanimous decision. However in the case of these 3 magazines, *Australian High Society*, *Fiesta* and *Knave* considered in the light of the Lawrence decision (*Howley v. Lawrence Publishing Co. Ltd.* CA 77/84) we beg to differ from the majority of the Tribunal.

Both *Knave* (Vol. 17, No. 11 and 12, Vol. 18, No. 1) and *Fiesta* (Vol. 19, No. 12 and Vol. 20, No. 1 and 2) are edited, produced and printed in Britain. Both have been in production for 20 years, and are published monthly. They are a mixture of stories, coloured photographs, letters, cartoons and advertisements. They were submitted to the Tribunal at the request of the importer. The Tribunal had the advantage of examining the magazines, hearing considerable evidence from counsel for the importer and a brief submission on behalf of the Comptroller of Customs. Counsel did not attempt to disguise the fact that both magazines are predominantly about sex; and it is clear from section 2 of the Indecent Publications Act 1963 that the treatment of sexual themes in themselves is not indecent *per se*. Counsel also stated that the magazines do not infringe the "Tripartite Test" developed in relation to *Penthouse* magazine, and they urged upon the Tribunal a classification as indecent in the hands of persons under the age of 18.

*Australian High Society*, February 1986, Vol. 1, No. 1, is of a similar format and style to the other magazines, perhaps appealing to a slightly more expensive market. The Tribunal was submitted an advance copy by the importer for a decision prior to the arrival of a bulk shipment. The magazine is an Australasian edition of an American magazine which has been published for 10 years. It consists primarily of photographs of single models both naked and partially clothed. These pictorial features dominate the written content which consists of a short story, 3 articles, an interview and jokes.

*Lawrence* is the most recent authority on indecency. The case involved the importation of 20 illustrated calendars which showed coloured pictures of nude males. Under section 2 of the Act calendars are documents. The Indecent Publications Tribunal under section 10 of the Act only has jurisdiction over books and sound recordings. It had never made a determination on the calendars which were first considered by the District Court. The Comptroller of Customs thought them indecent in terms of the Act and seized them. The Court of Appeal in a 3 to 2 majority upheld the District Court judgment that they were not indecent and dismissed the Comptroller's appeal. The Court of Appeal did not see the calendars.

The legal issue arose from the definition in section 2 of "indecent". The majority in *Lawrence* held that the "injurious to the public good" requirement applied to all indecent matters, in other words to any subject matter; and that the test to be applied was the statutory test and the statutory test alone. It might appear, if *Lawrence* is followed, that the ordinary meaning test (*Police v. News Media Ownership* (1975) 1 NZLR 610) of "an affront to current standards of the community" is no longer available to the Tribunal.

It is significant that the division of the opinion in the Court of Appeal was not founded on censorship policy but on the doctrine of precedent. This it could be argued lessens its importance as a statement on the definitive legal test of indecency.

Cooke J. in one of the dissenting decisions of *Lawrence* appreciated the widespread impact that a retreat from the majority decision in *Police v. News Media Ownership* (1975) 1 NZLR represented:

Alleged pornography is hardly a subject that can be dealt with in an ethereal way. I do not think that this Court should consider changing the established tests without some insight into the practical consequences of its decision.

Similarly it might be helpful to know whether the majority decision in the *News Media* case has been found to cause any real difficulty in everyday practice. *Waverley Publishing Co. Ltd. v. Minister of Customs* (1980) 1 NZLR 631 was a case where the same result was reached on both the majority and the minority approaches. In argument in present case there was no indication that generally the majority approach has not been found workable by District Court Judges or the Indecent Publications Tribunal.

We share this point of view.

For the following reasons therefore we believe the present publications under consideration can be distinguished from those in *Lawrence*:

1. The decision concerned a 'document'. The Tribunal has jurisdiction only over 'books' (which are defined separately in section 2) and sound recordings.
2. Any appeals from a Tribunal decision can only be heard by the High Court (section 19). There is no way that a matter considered by the Tribunal can reach the Court of Appeal. This further reinforces the legal distinction (however illogical in its consequences) between 'books' and 'documents' because the latter are at first instance determined by the District Court, and appeals reach the Court of Appeal.
3. The document in *Lawrence* concerned male nude photographs. These books, *Knave*, *Fiesta* and *Australian High Society* contain predominantly female nude photographs, as does the majority of material which comes before the Tribunal.