



18 April 2019

Response to requests for information on decisions to ban publications relating to terror attacks.

The Office of Film and Literature Classification (OFLC) received a range of requests seeking information on the recent decisions to classify as objectionable both the *Christchurch Mosque Attack Livestream* video and *The Great Replacement* (so called manifesto).

Both publications relate to the mosque attacks in Christchurch on 15 March 2019.

These decisions were made public by press release, first in relation to the video on 20 March 2019 and then for the so called 'manifesto' on 23 March 2019.

Both can be found here <https://www.classificationoffice.govt.nz/news/latest-news/christchurch-attacks-press-releases/>.

Official written decisions were released publicly, first in relation to the video on 27 March 2019, which can be found [here](https://www.classificationoffice.govt.nz/news/featured-classification-decisions/christchurch-mosque-attack-livestream/): <https://www.classificationoffice.govt.nz/news/featured-classification-decisions/christchurch-mosque-attack-livestream/>.

The decision relating to the so called 'manifesto' was released on 29 March 2019 and can be found [here](https://www.classificationoffice.govt.nz/news/featured-classification-decisions/the-great-replacement/) <https://www.classificationoffice.govt.nz/news/featured-classification-decisions/the-great-replacement/>

The Classification Office is an independent Crown entity which performs its functions at 'arms length' from central government. External agencies or individuals, including Ministers and their staff, have no influence over classification decisions made by the OFLC.

The OFLC is accountable to the New Zealand public. All relevant information held in relation to the decisions made to ban the two publications, is now being released for transparency.

How the process works

Publications can be referred to the OFLC for examination, as a complaint from the public or via agencies like the Department of Internal Affairs, Customs or Police.

But under section 13(3) the Chief Censor also has the power to 'call in' a publication. He has chosen to do so where there is sufficient concern, public interest or risk of harm.

In this case, Chief Censor David Shanks directed the Department of Internal Affairs to refer both publications to the OFLC on 17 March 2019. In effect this triggered the 'calling in' of the publications.

Both publications (the video, the so called 'manifesto') went through separate, but identical processes of classification.

Classification Advisors examine each publication against the *Films, Videos, and Publications Classification Act 1993*. In this case the Chief Censor, Deputy Chief Censor and Senior Classification Advisor reviewed both the video and the so called 'manuscript'. Two other Advisors provided further peer review.

A written analysis of each publication, including how it relates to the criteria in the Act is produced along with classification decisions for each. Decisions are robustly peer reviewed.

How peer review works

Senior Classification Advisors are required to peer review any decisions to ban publications.

The Classification team including the Chief Censor and Deputy Chief Censor reviewed the decision to ban both the video and the so called 'manifesto'.

This entailed a robust process of measuring the decision in detail against the legislation as well as previous decisions made to ban other publications containing the promotion of terrorism, extreme violence and cruelty. Other previous decisions are publicly available on the OFLC [website](https://register.classificationoffice.govt.nz/Pages/Screens/DDA/WarningPage.aspx) here:

<https://register.classificationoffice.govt.nz/Pages/Screens/DDA/WarningPage.aspx>

Under section 3(2)(f) of the Films, Videos and Publications Act (FVPCA), a publication is objectionable (banned) if it promote or supports, or tends to promote or support, acts of torture or the infliction of extreme violence or extreme cruelty. This means that a publication must advance, encourage, uphold or strengthen, rather than just show, describe or deal with torture and extreme violence or cruelty, for it to be banned under this section of the criteria.

The livestream video was deemed objectionable under s 3(2)(f) of the FVPCA. We found that it did promote or support, or tended to promote or support, the infliction of extreme violence as well as extreme cruelty.

Under section 3(3)(d) of the FVPCA, publications can also be deemed objectionable if they describe, depict or deal with the promotion or encouragement of criminal acts or acts of terrorism. In considering a publication under this part of the Act, the Classification Office must give particular weight to the extent, degree, and manner in which the publication promotes or encourages such activity, as well as relevant matters under s 3(4), which include the dominant effect of the publication, its impact, its intended audience, and its intended purpose.

The livestream video was found to also meet the threshold for objectionability s 3(3)d, due to the extent, degree and manner in which it promoted and encouraged acts of terrorism, while also taking into account its intended audience and purpose.

The so called 'manifesto' was found not to meet the high bar set for banning a publication under s3(2)(f), but was considered to meet the criteria for objectionability in accordance with s 3(3) d, including due consideration to relevant matters under s3(4) including the dominant effect of the publication, the intended audience and purpose of its use, which supported the decision.

For each decision process, the team debated the points at length and presented various counter points to test the decisions. Every member of the team agreed with the final decisions to ban both the video and the so called manifesto. There were no dissenting views. The final decisions were therefore unanimous and made public with the full support of the OFLC.

An exemption process has since allowed a range of people including reporters, researchers and academics to access and hold a copy of *The Great Replacement* for legitimate purposes, including education, analysis and in-depth reporting.

Making it public

The Chief Censor can make public statements about decisions to ban publications ahead of the full decision process being completed.

There are clear examples where illegal acts are recorded and distributed digitally, for example child abuse or acts of terror. This material may be clearly objectionable from the point of creation and enforcement agencies can act accordingly under the *Films, Videos, and Publications Classification Act 1993*.

In such cases, a public decision may be required at the earliest opportunity in order to provide information and warnings to the public to prevent further harm, and for enforcement agencies and others to respond. The final written decision must be made public within five working days as the official record of the classification, including justifications for the decision.

A key aim of the OFLC is to protect the public from content that is considered injurious to the public good, and to provide guidance about what people choose to view, read or play.

Finally, the Chief Censor and team considered public concerns, complaints and comments made directly to the office, as well as other public discussion and debates. The team also carefully considered the inevitable limit on freedom of expression under the Bill of Rights Act. On balance, it was considered a justifiable limitation given the potential risk of harm associated with both publications.

All emails and documents, including hand written notes, which relate to the decisions have been released here today and can be downloaded in PDF form.

We have excluded any administrative emails.

This is considered the response to requests made under the Official Information Act.

We trust this satisfies all requests submitted to date.

If requestors are not satisfied with how requests under the Official Information Act have been dealt with, they have the right to complain to the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.govt.nz or Freephone 0800 802602.

Sincerely,

Sia Aston
Acting Communications Manager