

IN THE MATTER of The Films, Videos, and
Publications Classification Act
1993 ("The Act")

AND

IN THE MATTER of an application under Section
47 of the Act by The Society
for the Promotion of
Community Standards Inc and
Right to Life Inc of the Book
entitled "*The Peaceful Pill
Handbook (New Revised
International Edition)*" ("*The
Peaceful Pill Handbook*")

**DECISION OF THE PRESIDENT OF THE FILM AND
LITERATURE BOARD OF REVIEW
DECISION NUMBER EIGHT**

THE BOARD

1. Claudia Elliott, President
2. Dr Jo Baddeley, Deputy President
3. Mark Andersen
4. Judy Callingham
5. Judith Fyfe
6. Andrea Haines
7. Dr Ian Lambie
8. Ani Waaka

Meeting at Wellington on 25 August 2008

APPEARANCES

1. Mr Lane for the Society for the Promotion of Community Standards Inc ("the Society").
2. Mr Wilson, Ms Ross and Ms Grange for the Authors
3. Mr Davie, Board Secretary, during oral submissions only.

THE PUBLICATION

- [1] The publication is a 214 page paperback book on various methods of suicide. It consists of information and opinion. It states that it is intended for the terminally ill and the elderly. The book is divided into 15 chapters, each with headings and sub-headings. Additional comments from the Authors about matters discussed in those chapters or under particular sub-headings are included in italicised sections. There are tables measuring the characteristics and efficacy of the suicide methods discussed, diagrams and chemical equations, lists of materials needed for some but not all suicide methods, photographs, bibliographic references, an index, a "reorder" form for the publication and a donation form for Exit International.

PRIOR DECISIONS

- [2] There are prior decisions made in respect to three interim restriction applications made by the Society and two by Right to Life New Zealand (Inc) ("Right to Life"). Those decisions should be read in conjunction with this decision.

TWO PUBLICATIONS

- [3] There are two publications of *The Peaceful Pill Handbook* which are referred to in submissions. The first is *The Peaceful Pill Handbook (New Revised International Edition)*, (The International Edition) the second is *The Peaceful Pill Handbook (Revised New Zealand Edition)*, (the New Zealand Edition).
- [4] To the best of the Board's knowledge, there were only three copies of the International Edition run, one of which was used by the OFLC to classify the publication. A second copy of the International Edition was used by the President in the 3 interim restriction applications.
- [5] The Board has been provided with copies of the New Zealand Edition on which it bases this decision.
- [6] It is the New Zealand Edition which is currently available for sale in New Zealand.
- [7] The Board has received submissions from the Society, Kensington Swan and the OFLC on the differences between the International Edition and the New Zealand Edition. There are 46 differences between the two publications. Forty of the differences relate to "*the same photograph but better quality*" while one photograph is "*the same photograph but in colour*". The New Zealand Edition is on better quality paper.

In respect to the text, the differences are, the order form on page 212, the front and back covers, the acknowledgement page and the publishing information. The New Zealand Edition is smaller in physical size than the International Edition.

The changes to the front cover, the acknowledgement page, publishing information and order form have been reformatted to comply with the OFLC decision. None of the material described is objectionable and would not require redaction. The quality of the print or size of the publication does not change the nature of the book.

The Board's finding is that the redactions in both publications are identical.

SUBMISSIONS

The Society for Promotion of Community Standards Inc ("The Society")

- (a) Letter dated 11 May 2008.
 - (b) Submission dated 15 May 2008.
 - (c) Email 16 May 2008 to Mr Boyle.
 - (d) Email dated 30 May 2008.
 - (e) Application for Review dated 1 June 2008.
 - (f) Submission dated 5 June 2008.
 - (g) Email dated 6 June 2008.
 - (h) Email dated 9 June 2008.
 - (i) Submission dated 13 June 2008.
 - (j) Submission dated 27 June 2008.
 - (k) Email dated 3 July 2008.
 - (l) Email dated 9 July 2008.
 - (m) Email dated 28 July 2008.
 - (n) Formal complaint dated 4 August 2008.
- A. Letter dated 11 May 2008 to the Secretary of Internal Affairs*
- [8] Seeks leave to apply to the Board.

B. Submission dated 15 May 2008

- [9] Submission to the Secretary of Internal Affairs seeks that *The Peaceful Pill Handbook (New Revised International Edition)* be banned.
- [10] Comments on suicide rates amongst young people in New Zealand.
- [11] Refers to sections 3(3)(1) and 3(4) seeks the publication be classified as “*objectionable*.”
- [12] Considers that the book has “*an immense potential for causing untold injury to the public good*”.

C. Email 16 May to Mr Boyle

- [13] Attaches media comment and details on Exit International.

D. Email dated 30 May 2008

- [14] Attaches correspondence from Hon. Jim Anderton MP.

E. Application for Review dated 1 June 2008

F. Application for Interim Restriction Order dated 5 June 2008

- [15] Advising that the Secretary has established a prima facie case by granting leave.
- [16] Attaches media information.

G. Email dated 6 June 2008

- [17] Attaches a media article.

H. Email dated 9 June 2008

- [18] Refers to media articles.

I. Submission dated 13 June 2008

- [19] Makes application in support of an interim restriction application which has been dealt with in Decision Number Three.
- [20] Attaches media articles.

J. Application for Interim Restriction Order dated 27 June 2008

- [21] Was supplied in respect to an application for a further interim restriction order and has been dealt with in Decision Number Five.
- [22] Attaches various media articles.
- [23] Seeks that the book be classified objectionable.
- [24] Refers to the Decision in *Baise-Moi* in respect to interim restriction orders.

K. Email dated 3 July 2008

- [25] Refers to media articles.

L. Email dated 9 July 2008

- [26] Seeks a further interim restriction order which has been dealt with in Decision Number Seven.
- [27] Refers to various media articles.

M. Email dated 28 July 2008

- [28] Seeks that all previous submissions be considered in the substantive application.
- [29] Refers to various media articles.

N. Summary of formal complaint dated 4 August 2008

- [30] The book on sale in Wellington is not the book which was classified.
- [31] There are five examples of differences in the book including three on the front cover, one in the blurb on the back cover, and the existence of coloured photographs.

Right to Life Inc

A. Applications for interim restriction orders

- [32] These submissions have been dealt with in earlier decisions which are to be read in conjunction with this decision.

B. Undated Submission

Prima Facie Case

- [33] Being granted leave, it has established a prima facie case.

Australian Classification Review Board

- [34] The Australian Classification Review Board classified the publication as objectionable.

The Classification

- [35] Is currently R18 but is available on the internet.

Government Suicide Prevention Action Plan

- [36] Discusses the same.

Human Rights Issue

- [37] Considers that this is a right to life issue.

Duty to Protect Life

- [38] The first duty of the State is to protect the lives of its citizens from conception to natural death, including the weak and vulnerable.

- [39] Refers to s.179 of the Crimes Act in assisting suicide.

NZ Bill of Rights

- [40] Refers to s.5 but considers that free speech should not be used in a manner which will harm another.

Submissions from other Organisations

- [41] Shares the concerns of the New Zealand Police and the Ministry of Health.

Age Concern Canterbury

- [42] Shares the concern of Age Concern Canterbury.

Youth Suicide

- [43] Notes the statistics.

Additional Matters to be Considered

- [44] Considers s.3(4)(a) the dominant effect.

- [45] Refers to s.3(4)(c) does not accept that the book has any social or scientific merit and submits that it is morally reprehensible.

- [46] S.3(4)(d) considers that the book will be obtained by depressed young persons under 18.

- [47] Refers to s.3(4)(e) considers that the book promotes an unlawful activity, including importation of a class C prohibited drug.

The Meaning of Objectionable

- [48] Refers to s.179 of the Crimes Act.

- [49] Refers to the fact that in New Zealand two Death with Dignity bills have been defeated.

- [50] Considers that suicide is a tragedy for the deceased, family and society.

- [51] Considers that the book promotes and supports violence through “*self murder*”.

- [52] Seeks that the book be banned.

Submission by Age Concern

Submission dated 20 June 2008

- [53] Objects to the current rating.

- [54] Considers the publication promotes violence by self-inflicted harm causing death and targets the elderly and terminally ill.

- [55] Expresses concern over risk to those with depression and mental illness.

- [56] Strongly objects to the value judgment contained in the Decision, ie that the lives of the elderly and terminally ill are not as worthy as those of other adults. The implication that the release of such a publication is justified because the target audience is the elderly and terminally ill is offensive, discriminatory and ageist.

Submissions by Authors

A. Submissions in respect to interim restriction order applications

- [57] These have been dealt with in earlier decisions which are to be read in conjunction with this decision.

B. Submission dated 29 July 2008

Statutory Framework

- [58] Section 52 requires a de novo decision from the Board.

Extensive Redactions

- [59] Sets out the redactions which have occurred.
- [60] Submits that “*in summary all sections relating to criminal activity, including the undetectability ratings accorded to each method in the Exit RP test, have been redacted*”.

Section 3(1)

Crime

- [61] It is accepted that the publication comes within the subject matter gateway of crime including sections 113, 116 and 179 of the Crimes Act 1961.
- [62] The way in which the publication deals with crime is not injurious to the public good.

Violence

- [63] Violence is not the focus of the book.
- [64] The focus is not on hanging, asphyxiation or the use of firearms but in peaceful means of ending life.

Section 3(2)

- [65] Is not applicable.

Section 3(3)

[66] Accepts the book falls within s.3B(3)(a)(i) but not s.3(3)(a)(i).

Promotion of Criminal Acts

[67] The book no longer promotes criminal acts.

Freedom of Expression

[68] Section 14 of the New Zealand Bill of Rights Act applies.

Irrelevant Considerations

[69] Irrelevant considerations raised by the Society and Right to Life include Dr Nitschke's character, other publications by the Author and the position of the Medical Council and who forwarded the book for classification .

Conclusion

[70] *"Now that the sections of the book which instruct in criminal activity have been systematically redacted, there is no longer any reason for the book to be classified objectionable. Although it does deal with crime and violence, it does not do so in a manner which is likely to be injurious to the public good."*

[71] The Authors accept the Classification Office decision of R18 is appropriate.

Submission of Office of Film & Literature Classification

A. Applications for Interim Restriction Orders

[72] These have been dealt with in earlier decisions which are to be read in conjunction with this decision.

B. Submission dated 7 August 2008

Classification Criteria

[73] *"The revised version of the publication still deals with matters of crime in terms of s.3(1) but, it is submitted, no longer in a manner that is likely to injure the public good if its availability is restricted to adults."*

Smuggling

[74] Information on how to smuggle Nembutal into New Zealand has been blacked out.

Manufacture and Use of Illegal Drugs

- [75] There is no longer information provided on the illegal manufacture and use of various drugs.

Removing Evidence of Aiding or Abetting a Suicide

- [76] Notes that the book has been edited to remove references to “*cleaning up after a suicide*”.

Inciting, Counselling or Procuring any Person to Commit Suicide

- [77] Refers to *Attorney-General v Able & Ors* [1984] 1 All ER 277 and *R v Tamatea* (2003) 20 CRNZ 363 in asserting that sale and distribution of the book itself is unlikely to attract prosecution under s.179 of the Crimes Act 1961.

- [78] Notes that Law Reform necessitates description of benefits of the thing or practice to be reformed. The Act therefore generally is not applied to expressions of opinion or attitude. The book does not promote or encourage criminal activity.

- [79] Section 3(3)(d) does not apply to the Author’s preference for Nembutal as an end of life means. There is no longer practical instruction on how to commit particular crimes sufficient to fall within s.3(3)(d).

Section 3(3)(a)(i)

- [80] The section does apply to killing oneself which is dealt with extensively in the publication. The means of suicide are “*described in a manner that is factual, clinical and instructional.*”

Section 3B(3)(a)(i)

- [81] The book cannot be banned under s.3B(3).
- [82] Despite the “*words of caution*” the book may appeal to some vulnerable young people: “*younger readers are less likely to recognise that the book is not intended for them or be able to weigh the information in the book against the knowledge that troubles can be overcome and that life can be enjoyable again with time and effort. Other young readers are likely to be disturbed by the material and could become unnecessarily fearful that they will prematurely lose loved ones who may be elderly or ill.*”
- [83] “*The risk of imitation by young persons of the self-harm outlined in the book, particularly those less complicated methods of suicide such as the use of an exit-bag is significant. Unless restricted to persons 18 years of age and over, the Classification Office submits that this material is likely to be injurious to the public good because, in terms of s.3B(3), the general levels of emotional and intellectual development and maturity of persons*

under that age mean that the availability of the publication to those persons would be likely to cause them to be greatly disturbed or shocked and increase significantly the risk of them killing, or causing serious harm to, themselves, others, or both.”

New Zealand Bill of Rights Act

[84] Section 5 applies.

APPLICABLE LEGISLATION

The Films, Videos and Publications Classification Act 1993 (“The Act”)

[85] In making its decision the Board is bound by the Act, the applicable sections in numerical order are s3(1), s3(2)(f), s3(3), s3(4) and s3B.

3. Meaning of “objectionable” –

- (1) For the purposes of this Act, a publication is objectionable if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.
- (2) A publication shall be deemed to be objectionable for the purposes of this Act if the publication promotes or supports, or tends to promote or support, -
 - (f) acts of torture or the infliction of extreme violence or extreme cruelty.
- (3) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, particular weight shall be given to the extent and degree to which, and the manner in which the publication –
 - (a) describes, depicts, or otherwise deals with –
 - (i) acts of torture, the infliction of serious physical harm, or acts of significant cruelty;
 - (iii) other sexual or physical conduct of a degrading or dehumanising or demeaning nature;

- (c) degrades or dehumanises or demeans any person;
 - (d) promotes or encourages criminal acts or acts of terrorism;
- (4) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, the following matters shall also be considered:
- (a) the dominant effect of the publication as a whole;
 - (b) the impact of the medium in which the publication is presented;
 - (c) the character of the publication, including any merit, value, or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific, or other matters;
 - (d) the persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available;
 - (e) the purpose for which the publication is intended to be used;
 - (f) any other relevant circumstances relating to the intended or likely use of the publication.

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
- (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.

New Zealand Bill of Rights Act 1990

[86] The following sections of the New Zealand Bill of Rights Act 1990 (hereinafter called "the Bill of Rights") apply:

- 4. Other enactments not affected** – No court shall, in relation to any enactment (whether passed or made before or after the commencement of this Bill of Rights), -
- (a) Hold any provision of the enactment to be impliedly repealed or revoked, or to be in any way invalid or ineffective; or
 - (b) Decline to apply any provision of the enactment –

by reason only that the provision is inconsistent with any provision of this Bill of Rights.

- 5. Justified limitations** – Subject to section 4 of this Bill of Rights, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits

prescribed by law as can be demonstrably justified in a free and democratic society.

6. **Interpretation consistent with Bill of Rights to be preferred** – Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.

14. **Freedom of expression** – Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

THE DECISION

Versions of the Peaceful Pill

- [87] The Board has exhaustively scrutinised both *The Peaceful Pill Handbook (New Revised International Edition)* and *The Peaceful Pill Handbook (Revised New Zealand Edition)* and finds both publications identical in terms of the redactions. It finds the 46 differences between the two publications as set out in paragraphs 3 to 7 inclusive above to be immaterial in terms of the decision the Board must make. It is the Revised New Zealand Edition which is for sale in New Zealand.
- [88] The Board unanimously classifies the publication *The Peaceful Pill Handbook (Revised New Zealand Edition)* as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years.

Section 3(1)

Gateways

- [89] In the Court of Appeal decision of *Living Word v Human Rights Action Group* (2000) 3 NZLR, 570 hereafter called the *Living Word decision* it was determined that the Board must consider whether the publication passes through one of the “gateways” in s.3(1) of the Act, and then whether it is considered to be injurious to the public good.
- [90] The Board finds *The Peaceful Pill Handbook (Revised New Zealand Edition)* passes through the gateways of crime and violence in that it “describes, depicts or expresses, or otherwise deals with” those matters in such a manner that the unrestricted availability of the publication is “likely to be injurious to the public good”.

[91] The Act does not define the phrase “*injurious to the public good*” so case law is relied upon to assist.

[92] The decisions of *Collector of Customs v Lawrence Publishing Co Limited* (1986) 1 NZLR 404 (hereinafter called “the Lawrence Publishing decision”) assists in defining “*injurious to the public good*”. At p 409 Woodhouse P states:

“The statutory concept requires demonstration that any relevant material has a capacity for some actual harm in order to justify the contemplated censorship”.

[93] In *The Society for the Promotion of Community Standards Inc v Everard* (1987) 7 NZLR 33 pg 57 (hereinafter called “the Everard decision”) the issue of likelihood of injury to the public good is addressed as follows:

“These extracts must now be read in the light of the point very clearly made by the full Court in Gordon & Gotch that requirements for discernible injury and capacity for some actual harm do not impose a procedural or evidential necessity for actual evidence to that effect. They are matters which an expert body can establish from its own judgment if necessary ... When one considers the likelihood of injury to the public good, one looks for a likelihood sufficiently real to be discernible or actual. Mere paranoid possibilities do not suffice... in the end indecency and within that concept any necessary prerequisites of injury to the public good to a large extent are less matters of fact than of judgment. While not quite in the league of the search for love, beauty, or the meaning of life, the search of injury to the public good in the end involves a very considerable message of value judgment. That rider as to mode of proof, which with respect obviously is necessary in the real world of adjudication, does not destroy the initial thesis identifying that which must be proved”

Crime

[94] The Board considers that if unrestricted, the publication would be injurious to the public good on the basis that crime per se is injurious to the public good. Specifically *The Peaceful Pill Handbook (Revised New Zealand Edition)* deals with the importation of class C drugs, the manufacture of drugs, cleaning up after a voluntary euthanasia, fabricating evidence, conspiring to defeat justice, and counselling, aiding or abetting a suicide, all of which are offences under the Crimes Act 1961. The Board must consider whether the manner in which the crimes are dealt with in the book is likely to be injurious to the public good.

[95] The Board finds that the manner in which crime is dealt with in *The Peaceful Pill Handbook (Revised New Zealand Edition)* is to concentrate on providing factual and legal advice on the issues rather than instruction on how to commit the crime or examples of how such crimes have been committed by others. It is

therefore not likely to be injurious to the public good if it is age restricted.

- [96] It is the Board's expert opinion, that because of the extent and nature of discussion of criminal activities in *The Peaceful Pill Handbook (Revised New Zealand Edition)*, and the manner in which they are presented, it is "likely to be injurious to the public good" unless the publication is restricted to those aged 18 years of age or over. At that age, it is considered people will be able to deal with the criminal content in a manner commensurate with their developing maturity.

Violence

- [97] The Board considers *The Peaceful Pill Handbook (Revised New Zealand Edition)* also passes through the gateway of violence.
- [98] The book deals with hanging, asphyxiation and death by firearms, although the Board notes this is a relatively minor part of the book. The issues involving violence are redacted to the extent that there is insufficient detail to show how to effect the actions, which would be injurious to the public good.
- [99] The Board finds that an age restriction of 18 years would protect children and young people from the violent content of the publication. The Board considers persons under 18 would not generally have the emotional and intellectual development to place the content of *The Peaceful Pill Handbook (Revised New Zealand Edition)* into the appropriate context. It would therefore be injurious to the public good for the publication to be made available to children and young people under 18 years.

Section 3(2)

- [100] The Board considered section 3(2)(f) but found that although extreme violence such as asphyxiation, hanging and death by a firearm was described, the book did not promote or support, or tend to promote or support the acts described. The actions described were clearly not supported or promoted, as they were described as non-peaceful means of ending life, which is contrary to the ethos of the book.

Section 3(3)

- [101] In considering if a classification of other than objectionable is appropriate the Board must consider s.3(3). The appropriate sections in respect to *The Peaceful Pill Handbook (Revised New Zealand Edition)* are ss.3(3)(a)(i), (iii), (c) and (d).

Section 3(3)(a)(i)

[102] The Board has to consider the extent and degree to which, and the manner in which the publication describes, depicts or otherwise deals with the infliction of serious physical harm. The Board accepts that suicide comes within the definition of infliction of serious physical harm.

[103] The extent and degree to which the publication describes the infliction of serious harm through suicide is extensive. The description of suicide, although comprehensive, detailed, clinical, factual and instructional, is presented in a neutral manner. An age restriction is, however, appropriate.

Section 3(3)(a)(iii)

[104] The Board considered whether there was physical conduct of a degrading, dehumanising, or demeaning nature but did not find the manner in which the publication described the physical act of suicide was degrading, dehumanising or demeaning. The Board found that, to the contrary, the topic of suicide was dealt with in a factual and clinical manner, although at times self-congratulatory.

[105] Once again the Board considered an age restriction of 18 years would address the issue of younger people not having sufficient maturity to put the topic of suicide, and the way it was dealt with in this book, into the appropriate context.

Section 3(3)(c)

[106] The comments in paragraphs [104] and [105] above can also be applied to section 3(3)(c), in that the manner in which the publication deals with end of life options is not portrayed in a way which degrades or dehumanises or demeans any person. It is presented in part as an option which may enhance humanity.

Section 3(3)(d)

[107] The Board has to consider if the publication promotes or encourages criminal acts. Neither "*promotes*" or "*encourages*" are defined in the Act. Promotes is defined in the Concise Oxford Dictionary as "*help forward or encourage*". Encourage is defined in the Concise Oxford Dictionary as "*urge, advise, stimulate by help*".

[108] The Board accepts that the criminal acts referred to in the publication include:

- (a) Smuggling;
- (b) Manufacture and use of illegal drugs;
- (c) Removing evidence;

- (d) Aiding or abetting suicide; and
- (e) Inciting counselling or procuring any person to commit suicide.

Smuggling

- [109] The Board accepts that it is illegal to import a class C drug into New Zealand. The publication does not give details on how such smuggling could occur, although on page 156 it states “*at Exit International we know of no-one who has declared their Nembutal and of no-one who has had their Nembutal confiscated in Customs. We do not encourage readers of this book, however, to break the law in this regard. The provision of this information is so informed decisions can be made*”.
- [110] The Board finds that smuggling is not promoted or encouraged. The publication discusses and gives examples, but does not encourage or promote smuggling.

Manufacture of Illegal Drugs

- [111] The Board finds there is insufficient information set out in the book to facilitate the illegal manufacture and use of drugs. Even if there is a reference on page 167 to the “Peanut Project”, there is insufficient information in the publication to replicate the project.
- [112] The publication does not promote or encourage the manufacture or use of drugs, but rather provides factual information. This is insufficient to promote or encourage the activity.

Removing Evidence of Aiding or Abetting a Suicide

- [113] The Board accepts that the publication provides factual information on the law and risks involved in aiding and abetting a suicide. A distinction is made between illegal and legal activities. There is insufficient detail given on how to clean away evidence to complete the task, and there is information on the likely penalty of such activity. The Board does not find the publication promotes or encourages the aiding or abetting of suicide to any great degree.

Inciting, Counselling or Procuring any Person to Commit Suicide

- [114] The Board accepts the OFLC submission “*The sale and distribution of the book itself is unlikely to attract prosecution under s.179 of the Crimes Act 1961*”. The Board accepts the application of a *Attorney-General v Able and Ors* [1984] 1All ER 277, where Woolf J refused to make a declaration that the sale of a booklet entitled “*A Guide to Self-Deliverance*” which had been implicated in a number of suicides, constituted aiding, abetting, counselling or procuring the suicide of another. Woolf J held that

the bookseller would have had to intend the booklet to be used by someone contemplating suicide and intended that the person would be assisted by the book's contents, and that he distributed it with that intention to such persons who read it.

Able was followed in *R v Tamatea* (2003) 20CRNZ 363 which found that the offence of inciting, counselling or procuring any person to commit suicide was not committed by someone who, in a heated argument, encouraged his partner to commit suicide after she said she would.

- [115] The Board takes into account that when law reform is being advocated it may be necessary to describe the benefits of the law or position which is sought to be reformed.
- [116] The Board accepts that there is a clear preference expressed by the Authors of the book for the use of Nembutal as an exit drug. It is an expression of opinion supporting amendment of the law to allow access to Nembutal as the most appropriate drug for end of life options.
- [117] It is the Board's view that *The Peaceful Pill Handbook (Revised New Zealand Edition)* does advocate law reform, it also gives advice on how to structure end of life options so that they are within the law. It does not offer instruction in how to break the law or advice on how to conceal such action. The Board therefore finds that *The Peaceful Pill Handbook (Revised New Zealand Edition)* does not promote or encourage criminal activity.

Section 3(4)

- [118] The Board is required to consider each of the subsections in section 3(4) of the Act in determining a classification.

(a) Dominant Effect

- [119] Pursuant to s.3(4)(a) the dominant effect of the publication is a lay person's guide to end of life options. It is also to advocate law reform in the area.

(b) Impact of the Medium

- [120] The cover of the publication is in muted colours except for the words "*Revised New Zealand Edition*".
- [121] The front cover also states "*Banned in Australia*". It is the Board's understanding that the redacted publication has not been classified in Australia.
- [122] The production value is generally low with photographs and the publication being subdued. There are black patches in the book where, at times, significant sections of the book have been

redacted. This provides impact in that the reader is aware that information is missing.

(c) *The Character of the Publication*

[123] The publication is apparently scientifically accurate, has social importance in advocating law reform, provides factual information on the law and provides options for educational purposes.

(d) *Persons or Classes to Whom the Publication is Intended or Likely to be Made Available*

[124] Page 11 of the publication sets out who the publication is and is not intended for.

[125] The publication in the Board's view is not likely to be used in impulse suicide because of its presentation. It is available for general sale in book shops.

(e) *The Purpose for which the Publication is Intended to be Used*

[126] The purpose of the publication is for law reform and as a guide to end of life options.

(f) *Other Relevant Circumstances*

[127] The Board finds there are no other relevant circumstances relating to the classification of the publication as other than objectionable.

Section 3B

[128] The Board is required to specifically consider s.3B and in particular s.3B(3)(a)(i) and (ii) of the Act in determining the classification of the publication.

[129] Section 3B(3)(a)(i) addresses material that to such an extent or degree describes or depicts or expresses or otherwise deals with 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.

[130] Section 3B(3)(a)(ii) addresses "*material that to such an extent or degree describes, depicts, expresses or otherwise deals with conduct that, if imitated, would pose a real risk of serious harm to self or others or both.*"

[131] The Board accepts Counsel for the Authors' submission that the book clearly falls within s.3B(3)(a)(i).

- [132] The Authors note that the book is not intended for the young or irrational or people suffering from psychiatric illness or depression. That in the Board's view, however, does not stop that sector of the community from having access to the book. The Board holds that there is some risk that if particularly young people read *The Peaceful Pill Handbook (Revised New Zealand Edition)* they may be influenced by it.
- [133] The manner in which the book deals with suicide by various methods may appeal to young readers. There has been significant publicity about Dr Nitschke, and the social tapu associated with suicide may add to the book's appeal for the young.
- [134] The Board accepts the OFLC submission "*the book may have the effect of making self-inflicted death appear acceptable and even desirable as a means to solve life's problems for its readers, given its approving and encouraging tone with respect to suicide. The rating of various methods may also encourage such readers to feel that their death can be achieved without undue suffering to themselves, the prospect of which may previously have acted as a deterrent. Young readers are less likely to recognise that the book is not intended for them or be able to weigh the information in the book against the knowledge that troubles can be overcome and that life can become enjoyable again with time and effort. Other young readers are likely to be disturbed by the material and could become unnecessarily fearful that they will prematurely lose loved ones who may be elderly or ill*".
- [135] It is for the above reasons that the Board finds that *The Peaceful Pill Handbook (Revised New Zealand Edition)* should be restricted to persons 18 years of age and over. The level of emotional and intellectual development and maturity of persons under that age leads to a risk that the publication may cause them to be greatly disturbed, or shocked, and significantly increase the risk of them killing or causing serious harm to, themselves, others, or both.

BILL OF RIGHTS ACT 1990

- [136] In making its decision in respect to *The Peaceful Pill Handbook (Revised New Zealand Edition)* the Board has considered the *Living Word* decision which states:
- "The balancing required by s 3 must be infused by due consideration of the application of the Bill of Rights"*
- [137] The Board finds that the decision it has made is the least restrictive available to it, in accordance with the considerations it

must have regard to under the various sections of the Act and the Bill of Rights.

- [138] In *Moonen 1* the Court of Appeal suggested that it may be helpful to the Board in performing its functions to follow a 5-step process. In a later decision *Moonen v Film & Literature Board of Review* (2002) 2 NZLR 754, 760 (hereinafter referred to as "*Moonen 2*") the Court of Appeal did, however, emphasize that the 5-step approach was not intended to be prescriptive and that other approaches are open. The Board notes that it does not find the application of the 5-step approach altogether easy, and notes that aspects of the approach would appear to require the Board to make judgements on the consistency with the Bill of Rights of the 1993 Act. The Board further notes that the Court of Appeal did say in *Moonen 1* that the approach was potentially difficult, and that the full Court of the High Court in *Moonen 2* (*Moonen v Film & Literature Board of Review* (No. 2) (2002) NZLR 385, 366) echoed these sentiments saying that:

"We have not exactly found the approach easy of practical application".

- [139] The Board would prefer a simpler approach which recognised that in interpreting and applying various concepts such as "*promotion and support*" and "*injurious to the public good*", freedom of expression is required to be considered together with the reasonable limits on that freedom that the 1993 Act provides for. In the earlier part of this decision, the Board has emphasised that in classifying this publication it has been conscious of the importance of freedom of expression and has attempted to limit that freedom only to the extent that it is permitted by the 1993 Act, and in a manner that is proportionate to the harm that an unrestricted classification would cause. Nonetheless, it appears sensible for the Board to continue to utilise the 5-step approach for the present.
- [140] In the *Moonen 1* decision the Court of Appeal held that a 5-step approach may assist in reconciling the relevant provisions of the Bill of Rights Act with those of the Classification Act.
- [141] The first two steps are to identify the different possible interpretations of the word or words in the Act and if only one meaning is properly open to adopt it. The phrases in section 3 of "*promotion and support*" and "*injurious to the public good*" have been defined and the Board is bound to apply the definitions of the appropriate words in the sections in the Act, and in case law, and has done so.
- [142] Step 3 of *Moonen 1* involves identifying the extent if any to which "*the meaning adopted limits*" the "*relevant right or freedom*". It is acknowledged that the meaning identified in

respect to important phrases defined in the Act, in case law and dictionary definition does limit rights and freedoms under the Bill of Rights Act, especially section 14. Section 14 provides for the right to freedom of expression, including the right to seek, receive and impart information and opinions in any form. This freedom includes the right to produce and read material involving cruelty, or violence as seen in *The Peaceful Pill Handbook (Revised New Zealand Edition)*. As the Act under which this publication is reviewed is a Classification Act, it is acknowledged that it limits the scope of the right of freedom of expression by defining publications objectionable pursuant to section 3 of the Act. The rights of free expression of authors, distributors and readers are all restricted by the definition of words within the Act and the objectives of the Act. The extent to which these rights are restrictive is commensurate with the type of restriction placed on the book, in this case a restriction to persons aged 18 years or over. Potential viewers under the age of 18 years are restricted in their right to read *The Peaceful Pill Handbook (Revised New Zealand Edition)*. All those involved in production, distribution, promotion and reading of *The Peaceful Pill Handbook (Revised New Zealand Edition)* are restricted from having persons under the age of 18 years view the publication.

[143] The Board is then required to consider whether the extent of such limitation, if found, can be demonstrably justified in a free and democratic society. The objective of the Act is to provide a classification and censorship system in respect to publications, as set out in the long and short titles of the Act. The way in which the objective is achieved must be reasonable in proportion to the importance of the objective, and interfere as little as possible with the right or freedom affected. The Board has had to balance the value of freedom of expression against the need for protection of persons under 18 years from being exposed to cruelty and violence.

[144] Pursuant to the 5th step in *Moonen 1* the Board considers the limitations it has placed on *The Peaceful Pill Handbook (Revised New Zealand Edition)* are justified on balance, taking into account the intention of the Act under which the Board is required to make its decision. It is the Board's view that its decision can be demonstrably justified in a free and democratic society.

THE AGE RESTRICTION

[145] It is the Board's opinion that restriction on reading *The Peaceful Pill Handbook (Revised New Zealand Edition)* by persons under 18 years is justified, due to society's wish to protect children and

young persons from likely injury, yet provides the minimum interference with the rights under the Bill of Rights Act.

- [146] The Board cites the comments made in the Board's decision dated 8 September 2000 in response to the Court of Appeal's direction to the Board in *Moonen I* (p 10). The Board, in that decision, makes reference to the intent shown by Parliament in passing the Act to balance the right of freedom of expression against the need to protect the vulnerable in society.

"It is clear that the House was well aware of the necessity of considering other rights in this context, particularly the right to freedom of expression, and of achieving an appropriate balance. It is also clear, however, where they considered that that balance should be:

That gets to the heart of this legislation. How does one achieve that balance between on the one hand the rights of people to do what they see fit in the privacy of their own homes, and on the other hand the greater public good? I think that the answer to that question is that we have to look at the harm that activities, even those ostensibly conducted in private, have the potential to do to innocent victims in particular. I think that for my part I would certainly err on the side of the public good, and if that means at least in a literal sense restricting individual rights, then I think the cause here is so important that we should be prepared to do that." John Blincoe (1992) NZPD p 12775.

DISPLAY CONDITIONS

- [147] The Board requires the following display conditions:

- (a) That when the publication is on public display, the classification given to the publication must be shown by way of a label issued in accordance with a direction under section 36A(2) of the Act; and
- (b) That the label must be affixed to the book in the lower right hand corner so as to cover *Banned* and preferably *Banned in Australia*; and
- (c) That the book must be publicly displayed only in a sealed package through which the classification can be clearly seen.

Dated at Auckland this 12 of September 2008.


Claudia Elliott

President, Film and Literature Board of Review