

Counter-Terrorism Acts (Designations and Control Orders) Amendment Bill: Submissions of the Classification Office for the Justice Select Committee

1. Te Mana Whakaatu – Classification Office appreciates the opportunity to make a submission in relation to the Counter-Terrorism Acts (Designations and Control Orders) Amendment Bill (the Bill).
2. Te Mana Whakaatu is an independent Crown entity responsible for classifying publications that may be objectionable. This is a specialist function under the Films, Videos, and Publications Classification Act 1993 (the FVPC Act). A classification can be reviewed by the Film and Literature Board of Review but cannot be challenged in prosecutions proceedings before the courts.
3. Our submission is limited to clause 15 of the Bill, which covers the sections of the FVPC Act relevant to the Terrorist Suppression (Control Orders) Act 2019 (the Act). The purpose of this submission is to explain relevant elements of how Te Mana Whakaatu classifies violent extremist content.
4. Currently the Act provides that a terrorism-related offence (and thereby one qualifying criteria for a control order) is a conviction for an offence under the FVPC Act which relates to a publication that has been classified as objectionable for reasons in section 3(3)(d) of that Act. Those publications are objectionable on the basis that they promote or encourage acts of terrorism to such an extent and degree that they should no longer be publically available.
5. Clause 15 of the Bill expands the reasons for which a publication may be classified as objectionable in order to be a terrorism-related offence under the Act. The definition is expanded to include:
 - a. publications deemed to be objectionable for reasons in section 3(2)(f) of the FVPC Act, that is on the basis that they promote or support, or tend to promote or support, acts of torture or the infliction of extreme violence or extreme cruelty); and
 - b. publications determined to be objectionable for reasons in section 3(3)(a)(i) of the FVPC Act, that is on the basis of the extent and degree to which, and the manner in which, the publications describe, depict, or otherwise deal with acts of torture, the infliction of serious physical harm or acts of significant cruelty.
6. Te Mana Whakaatu has classified material submitted to it which was produced by entities and individuals who advocate the use of violent extremism against other people on the basis of race or religious belief. This material includes publications produced by religious extremist groups (for example ISIS or Daesh), accelerationist groups (for example the Terrorgram Collective), and white supremacists (for example lone actors).

7. This extremist content is submitted by law enforcement (such as Police or the Digital Safety Group in the Department of Internal Affairs) or called in by the Chief Censor for classification under section 13 of the FVPC Act.
8. Each publication submitted to Te Mana Whakaatu is classified based on an examination of its specific content and a consideration of matters that the FVPC Act requires. The effect of this is that each publication's classification is unique.
9. Extremist publications have be classified as objectionable for reasons in sections 3(2)(f), 3(3)(d), or 3(3)(a)(i) (i.e. all the section currently proposed in clause 15), depending on the content of the publication. To give examples:
 - a. The "manifesto" of the Christchurch terrorist is classified for reasons under section 3(3)(d) in that it advocates for acts of terror against immigrant populations.
 - b. The livestream of the 15 March 2019 Christchurch attacks is classified as objectionable for reasons under section 3(2)(f) as it presents and promotes extreme acts of cruelty in the murders contained in it.
 - c. The "manifesto" and the livestream of the May 2022 attack in Buffalo, New York are both classified under section 3(2)(f) given their advocacy of certain cruel, murderous acts.
10. Te Mana Whakaatu also classifies commercial publications, including films and games. These are usually submitted by the Film and Video Labelling Body under section 12 of the FVPC Act. Law enforcement can submit, or the Chief Censor may call in, a commercial publication under section 13 if necessary.
11. Some commercial publications have been classified as objectionable and therefore are illegal in New Zealand. Some of these will have been classified for reasons under sections 3(2)(f), 3(3)(d), or 3(3)(a)(i).
12. The FVPC Act requires that for each classified publication, Te Mana Whakaatu produces a notice of decision which includes the reasons for the decision, and that all classification decisions are recorded on a publically available online register.
13. If, in determining whether to grant a control order, it becomes necessary to establish whether a conviction under the FVPC Act relates to violent extremist content, rather than commercial content, it would be necessary to read the notice of decision.
14. Te Mana Whakaatu offers this submission to supports the Committee's consideration of the Bill and is happy to provide further information or to appear before the Committee as necessary.