

## **Pre-Submission Consultation Process for Crown Agencies**

### **Conditions of Use**

*There are Crown agencies who conduct investigations into alleged criminal conduct relating to potentially objectionable publications. There may be reasons why those agencies can not submit a publication for classification, for example during a covert investigation. In these situations, the Classification Office can provide a pre-submission consultation to help the Crown agency understand the classification issues associated with the publication. The Classification Office is independent from the Crown agencies and always works consistently with the principles of natural justice. These conditions of use explain the pre-submission consultation process, the expected outcome of the process and the conditions on which the service is delivered.*

1. One of the Classification Office's functions is to classify publications submitted to it by specified Crown agencies under section 13 of the Films, Videos, and Publications Classification Act 1993.
2. The Crown agencies that have the right to submit publications are New Zealand Customs, New Zealand Police, and the Department of Internal Affairs.
3. Once a publication has been submitted the Classification Office must classify the publication under the Act. The classification of a publication as objectionable has the effect of being conclusive evidence in any proceedings, including the prosecutions under the Act<sup>1</sup>.
4. The Classification Office must act independently in performing its statutory functions and duties under the Act<sup>2</sup>.
5. It is important that the classification of publications is an independent process which follows the principles of natural justice; in particular, the right to make written submissions in relation to the issue of classification by those who may be party to proceedings under the Act.
6. The nature of an investigation means that it is not always possible for Crown agencies to submit a publication for classification during an investigation and allow alleged owners of

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<sup>1</sup> Section 41 of the Act.

<sup>2</sup> Section 77 of the Act

the publications to exercise the right to take part in the classification process, for example during a covert investigation.

7. It is however important that Crown agencies undertaking active investigations can seek information and guidance on classification issues relevant to publications which they are investigating. If Crown agencies cannot do this their investigative resources may not be well used, and owners of publications may be put to unnecessary inconvenience and distress.
8. The Classification Office offers Crown agencies the opportunity to consult the Office on a publication, or a class of publications, before submission. This is called a pre-submission consultation.
9. To ensure independence and transparency this document records the basis on which these consultations may occur.
10. A pre-submission consultation will give the Crown agency an indication of likely considerations if the publication were submitted for classification. This will help the agency decide whether to submit publications or follow alternative investigative paths.
11. Examples of the likely considerations include:
  - a. What is the publication that could be submitted?
  - b. What gateway criteria could be met?
  - c. What element of the publication could promote and support certain activities?
  - d. What specific consideration the Classification Office would have to have regard to if the publication were submitted.
  - e. Have similar publications been classified before.
12. In a pre-submission consultation, the Classification Office does not provide the Crown agency with an indicative or likely classification.
13. The Classification Office has a rigorous process before classifying a publication. This process includes obtaining submissions for natural justice purposes, peer review and quality assurances, approval by a person with delegated authority to classify a publication on behalf of the Classification Office, and potentially even a community or expert consultation process. Until these processes are complete there is no classification.
14. The Classification Office will ensure that the guidance it offers the Crown agency in a consultation process is provided with a good level of knowledge and skill. No assurances are given however that the actual classification process, after submission, will proceed on the same basis or reach the outcome the Crown agency expects.

15. To request a pre-submission consultation Crown agencies should contact the Classification Office Registrar (the Registrar) on +64 4 471 6770 or at [submissions@classificationoffice.govt.nz](mailto:submissions@classificationoffice.govt.nz) and request a "**pre-submission consultation**". If an emergency that requires an immediate response, the Crown agency can use established communication with the Classification Office, the Deputy Chief Censor, or the Chief Censor.
16. A pre-submission consultation process will occur in a manner suitable for the Crown agency and the Classification Office. This can include correspondence, telephone calls, and meetings (in person or virtual).
17. If actual publications are to be viewed the Registrar will arrange a secure method for the Classification Office to view that publication.
18. The guidance offered in a pre-submission consultation is for the Crown agency's investigative and submission purposes only. If the Crown agency discloses the pre-classification process (for example to a defendant or a Court) this document should also be disclosed to ensure the limitations of a pre-submission consultation are clearly understood.
19. If the publication is submitted for classification after a pre-submission consultation the existence of the consultation will be disclosed by the Classification Office when it notifies parties to the classification process and seeks written submissions. The details of the consultation may be also disclosed at that time.