

**NOTICE OF DECISION
UNDER SECTION 38(1)**

TO: Philip Nitschke
PO Box 37781
Darwin, NT
Australia 0821



Title of Publication: The Peaceful Pill Handbook
Other Known Title(s): Not Stated
Author(s): Dr Philip Nitschke, Dr Fiona Stewart
Publisher(s): Exit International US Ltd
Format: Book
Country of Origin: USA
Language(s): English
OFLC No: 700240



Decision:

Objectionable.

Direction to issue a label has not been given.

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Submission procedure:

On 14 February 2007, Dr Philip Nitschke applied to the Chief Censor for leave to submit the publication for classification. This was granted by the Chief Censor on 15 February and interested parties were notified of their right to make a submission on the publication before 8 March 2007. The Classification Office received several written submissions in response.

In a letter dated 1 March 2007, Peter Brown MP, New Zealand First Deputy Leader and sponsor of the Death With Dignity Bill, expresses concern about "books, which target the general public...and which provide information that could be used in a dangerous anti-social manner". He believes the book should be banned if it would be on the open market, if the "instructions in that book are realistic" and if "such information is likely to be used by some to manufacture a pill for application by others."

In a letter dated 21 February 2007, Simon Robb, Registrar of the Medical Council of New Zealand, notes that euthanasia is illegal in New Zealand.

Senior Police Legal Advisor Inspector Alistair Murray requested a copy of the book, which was couriered to him on 5 March 2007. He was given an extension until 12 March 2007 to make a submission. On 12 March Alistair Murray emailed the Office and stated that the Police believe that the publication of the book in certain circumstances would be a potential breach of the criminal law, in particular, s179 of the Crimes Act 1961. This section makes a person liable to a period of 14 years imprisonment if that person "incites, counsels, or procures any person to commit suicide, if that person commits or attempts suicide in consequence thereof; or aids or abets any person in the commission of suicide". He states that "The main Police concern is that the book purports to counsel persons on how to commit suicide by discussing a series of options as to the best method of achieving that object."

It is the view of the police that the very purpose of the book is to discuss the various options, 'pros and cons' of ways in which to commit suicide leaving the reader with the informed view as to the most appropriate method given their particular circumstances. The publication of the book on its own may not necessarily be sufficient to breach the criminal law. In order for police to establish a prima facie case police would need to establish the intention of the authors, and show that the book was instrumental in providing advice. The advise and necessary intention coupled with the commission or attempted commission of suicide "in consequence thereof", would be sufficient to establish criminal liability. Liability would not necessarily be restricted to the authors depending on the intent of the subsequent parties. Distributors or others associated with the delivery of the book to the end user could be criminally liable if they have the necessary intent.

The Voluntary Euthanasia Society of New Zealand sent a submission, which was received at the Office on 13 March 2007. Dated 3 March 2007, the letter states that its 1500 members were eager to obtain copies of the book, the content of which had already been explained at workshops by the authors. The Society president, Mr Jack Jones, questions any direct connection between the book and its authors as "abettors and readers as those abetted" He believes that the book is intended as a reference work containing the relevant information rather than to influence readers' choices. He suggests that the book should be given "a full clearance", however an age restriction would be acceptable.

In a letter dated 11 March 2007, Ken Orr of the Right To Life New Zealand Inc., submits that his organisation is opposed to euthanasia and believes that the book should be prohibited in New Zealand. He submits that the book "promotes, incites or instructs in matters of crime", citing the decision of the Federal Court of Australia in *Michael Brown & Ors v Members of the Classification Review Board of the Office of Film and Literature Classification* [1998] 319 FCA (24 March 1998) that upheld a decision to refuse classification of a student newspaper in Australia because it instructed in how to shoplift.

Maria Cotter, Team Leader of the Public Health Directorate of the Ministry of Health, also sent a written submission which was received at the Office on 18 May 2007. She believes that the book should be classified as objectionable under s3 of the FVPC Act because if available to the public it would be of "interest to and read by people at risk of suicide as well as those contemplating euthanasia. In addition, we note that the book itself confuses these two subjects by the use of the term 'suicide' throughout." She expresses concern with the step-by-step instructions for carrying out several suicide methods and cites research into the association between portrayal of suicide in the media and increases in suicides using those methods. "Studies of the impact of *Final Exit*, a book advocating suicide for those who are terminally ill, found a consistent association suggesting that the book had influenced the choice of suicide method in a number of cases".

Ms Cotter also states that the book's rating of suicide methods by 'reliability' and 'peacefulness' will have the potential to increase fatal attempts in some population groups, such as women, who have previously been less likely to use more lethal methods of suicide due to perceived violence or pain associated with them. Given that approximately 80 % of suicides occur in people aged 25 years and over, the Ministry does not consider it sufficient to place an age restriction on the book in order to prevent likely injury to the public good. The Ministry also points out that the book illustrates the manufacture of barbiturates, particularly pentobarbital which is a class C drug under the Misuse of Drugs Act 1975. It includes a discussion of how to source the chemicals and glassware needed to manufacture barbiturates, and describes elements of synthesis techniques. Ms Cotter submits that the publication "promotes or encourages criminal acts" under s3(3)(d) of the FVPC Act.

Under s23(1) of the FVPC Act the Classification Office is required to examine and classify the publication.

Under s23(2) of the FVPC Act, the Classification Office must determine whether the publication is to be classified as unrestricted, objectionable, or objectionable except in particular circumstances.

Section 23(3) permits the Classification Office to restrict a publication that would otherwise be classified as objectionable so that it can be made available to particular persons or classes of persons for educational, professional, scientific, literary, artistic, or technical purposes.

Description of the publication:

The publication is a paperback book consisting of 214 pages plus soft card covers. The majority of the content is text with some numbered diagrams and black and white photographs. The front cover displays the title *The Peaceful Pill Handbook* and the authors' names in purple text against a photographic background of waves on a beach at sunset. The Exit International US brand and

logo also appear on the front and back covers. The back cover contains a blurb on the content of the book, stating that in supplying a test of the reliability of various methods of suicide, the publication "enables readers to compare for themselves the benefits of various options such as Nembutal from Mexico, Helium and the Exit Bag, prescription drugs, carbon monoxide, cyanide and, of course, the DIY 'Peaceful Pill'."

The publication is a reference book on various methods of suicide and is intended for the seriously ill and the elderly. Although the style of the book is sober, informative and instructional, it is permeated with the authors' advocacy of voluntary euthanasia and assisted suicide. The book is divided into 15 chapters, each with headings and subheadings. Additional comments from the authors about matters discussed in those chapters or under particular subheadings are conveyed in italicised paragraphs. There are tables measuring the efficacy of the suicide methods discussed, diagrams and chemical equations, lists of ingredients and materials needed for various suicide methods, photographs, bibliographic references, an index, a 're-order' form for the publication and a donation form for Exit International.

Chapter headings include *Suicide and the Law*, *The Exit 'RP' Test*, *Hypoxic Death & The Exit Bag*, *Carbon Monoxide*, *Cyanide*, *Drug Options – Morphine*, and *After it's Over*. The early chapters provide background to the debate over voluntary euthanasia with particular emphasis on Australia. The preface to the book contains a "word of caution" noting that the book is intended for "seriously ill and suffering people" and is "not intended for those who are young or irrational or for people who are suffering from psychiatric illness or depression." The authors acknowledge the risk that the book may be read by people for whom the information is not appropriate but contend that the risk of misuse cannot justify withholding the information from ill or elderly people who need "end of life options".

Many of the chapters follow a similar structure, providing the history of a particular suicide method, details on how the method works on the body, a testimonial account by someone who has witnessed a partner or friend use the method, instructional material and diagrams, lists of equipment and photographs, and commentary and discussion by the authors on the merits of the method according to the "Exit RP" test. The "Exit RP" test rates each method of suicide according to various criteria including reliability, peacefulness, availability, undetectability, speed of death and safety to others. Each method is given an "RP" score out of 50. The Exit RP scores for every method discussed are also provided in a table at the end of the book

The meaning of "objectionable":

Section 3(1) of the FVPC Act sets out the meaning of the word "objectionable". The section states that 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.

The Court of Appeal's interpretation of the words "matters such as sex, horror, crime, cruelty or violence" in s3(1), as set out in *Living Word Distributors v Human Rights Action Group (Wellington)*, must also be taken into account in the classification of any publication:

[27] The words "matters such as" in context are both expanding and limiting. They expand the qualifying content beyond a bare focus on one of the five categories specified. But the expression "such as" is narrower than "includes", which was the term used in defining "indecent" in the repealed Indecent Publications Act

1963. Given the similarity of the content description in the successive statutes, "such as" was a deliberate departure from the unrestricting "includes".

[28] The words used in s3 limit the qualifying publications to those that can fairly be described as dealing with matters of the kinds listed. In that regard, too, the collocation of words "sex, horror, crime, cruelty or violence", as the matters dealt with, tends to point to activity rather than to the expression of opinion or attitude.

[29] That, in our view, is the scope of the subject matter gateway.¹

The content of the publication must bring it within the "subject matter gateway". In classifying the publication therefore, the main question is whether or not it deals with the following matters in such a manner that the availability of the publication is likely to be injurious to the public good:

Matters such as crime

The publication deals with matters of crime. It provides first-person accounts of Exit International members who have obtained the drug Nembutal by ordering it on the internet or making a special trip to purchase it legally in Mexico. These people have then imported the drug through the mail or have carried it on their persons or in their luggage into Australia. Nembutal is the common name for pentobarbital which is classified in New Zealand as a Class C controlled drug by the Misuse of Drugs Act 1975, the import and possession of which is an offence under s6 of that Act. Other chapters of the book describe how to manufacture, from precursor substances, barbiturates (Class C controlled drugs) and cyanide (the manufacture of which requires the manufacturer to be approved and registered by the Director-General of Agriculture under the Agricultural Compounds and Veterinary Medicines Act 1997; the use of which requires a Controlled Substances Licence from the Environmental Risk Management Agency under the Hazardous Substances and New Organisms Act 1996). The book also contains information on how to "clean up" after a suicide so that the authorities do not record the cause of death as suicide, and so that the risk of implicating someone else in the death is minimised. In New Zealand, persons engaged in such "clean ups" put themselves at risk of prosecution under s113 (fabricating evidence) and s116 (conspiring to defeat justice) of the Crimes Act 1961. Any subsequent discovery of the activities and items that have been "cleaned up" may reveal some degree of culpability for counselling, aiding or abetting a suicide in contravention of s179 of the Crimes Act 1961. These issues are discussed further below.

Matters such as violence

The publication deals with matters of violence in the form of self-inflicted harm causing death. As a book about how to commit suicide, it contains detailed information on different methods by which to end one's life. While much of the book is concerned with methods that provide a greater level of "peace" and dignity, more obviously violent methods such as the use of guns, hanging and asphyxiation are mentioned at various points. While the information largely presents as factual text, the publication also contains a number of photographs. Some of these appear gratuitous, particularly those involving mannequins with plastic bags poised over their heads and then inflated over their faces, and mannequins with intravenous drips apparently attached to their arms. These matters are also discussed further below.

Certain publications are "deemed to be objectionable"

Under s3(2) of the FVPC Act, a publication is deemed to be objectionable if it promotes or supports, or tends to promote or support, certain activities listed in that subsection.

¹ *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.

In *Moonen v Film and Literature Board of Review (Moonen I)*, the Court of Appeal stated that the words "promotes or supports" must be given "such available meaning as impinges as little as possible on the freedom of expression"² in order to be consistent with the Bill of Rights. The Court then set out how a publication may come within a definition of "promotes or supports" in s3(2) that impinges as little as possible on the freedom of expression:

Description and depiction ... of a prohibited activity do not of themselves necessarily amount to promotion of or support for that activity. There must be something about the way the prohibited activity is described, depicted or otherwise dealt with, which can fairly be said to have the effect of promoting or supporting that activity.³

Mere depiction or description of any of the s3(2) matters will generally not be enough to deem a publication to be objectionable under s3(2). When used in conjunction with an activity, the Classification Office defines "promote" to mean the advancement or encouragement of that activity. The Classification Office interprets the word "support" to mean the upholding and strengthening of something so that it is more likely to endure. A publication must therefore advance, encourage, uphold or strengthen, rather than merely depict, describe or deal with, one of the matters listed in s3(2) for it to be deemed to be objectionable under that provision.

The Classification Office has considered all of the matters in s3(2). *The Peaceful Pill Handbook* does not fall within s3(2) because it contains none of the matters listed therein.

Matters to be given particular weight

Section 3(3) of the FVPC Act deals with the matters which the Classification Office must give particular weight to in determining whether or not any publication (other than a publication to which subsection (2) of this section applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable.

The Classification Office has considered all the matters in s3(3). The matters that it considers relevant to *The Peaceful Pill Handbook* are

s3(3)(a)(i) *The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with acts of torture, the infliction of serious physical harm, or acts of significant cruelty.*

and

s3(3)(d) *The extent and degree to which, and the manner in which, the publication promotes or encourages criminal acts or acts of terrorism.*

Although suicide per se is not illegal, s3(3)(a)(i)'s reference to "serious physical harm" does not require the harm to be illegal, and there can be little doubt that using some means to kill one's self is included in the definition of "the infliction of serious physical harm". The publication therefore deals extensively with the infliction of serious physical harm in its discussion and detailed descriptions of various methods of suicide. These suicide methods are described in a manner that is factual, clinical, thorough, and instructional. Those readers intent on ending their lives are likely to find this manner of description helpful and reassuring. Others will find it disturbing and cold. For example, in chapter 5 *Hypoxic Death & the Exit Bag*, the suicide of a

² *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at para 27.

³ Above n2 at para 29.

man using sleeping tablets and a plastic bag is described by Kevin, a narrator identified as the dead man's neighbour. Each step of the suicide method is numbered from 1 to 5. Kevin then writes that "At this point his arms relaxed and lowered and the elastic neck band slipped from his thumbs. The bag positioned itself snugly – but not tightly – around his neck. As Brian fell into a deeper and deeper sleep the bag expanded and contracted in time with his breathing. Each breath lowered the oxygen concentration inside the bag from the original 21%, each breath raised the level of carbon dioxide."

Another example of this manner of description is in how "Terry's" story is told. To emphasise his belief that a dying person should not have to resort to a violent or undignified means of suicide, Dr Nitschke dispassionately relates his encounter with a terminally ill man named Terry, who when informed that the bottle of Nembutal he obtained at some expense was in fact not Nembutal, asked Nitschke how to use a rifle to kill himself. Nitschke writes that "I told him the best place to put the muzzle of his rifle was . . . [details omitted]" Nitschke relates that Terry did use his gun.

Turning to the extent and degree to which, and the manner in which, the book promotes or encourages criminal activities in terms of s3(3)(d), each chapter's assessment of the efficacy of a particular suicide method builds towards a clear preference for the drug Nembutal. This preference on the part of the authors has also been made clear through early criticisms of palliative care and "slow euthanasia" by morphine injection, as well as in the chapter on *What is a "Peaceful Pill?"* where the authors reveal that Exit International's main research focus is now upon developing a pill that could be used to end life peacefully and reliably at a time of one's own choosing. The authors' preference is firmly based on the well-intentioned belief that the law currently denies "seriously ill and elderly people" their right "to make carefully considered and fully informed decisions about their own life, and death."

When advocating law reform or a change in social perception, it is often necessary to describe the benefits of the thing or practice that is outlawed or stigmatised to get the law reformed or the perception changed. Whether or not one agrees with what is being advocated, such expression is traditionally afforded the highest protection and is the reason why the FVPC Act cannot generally be applied to expressions of opinion or attitude. It is one thing, however, to advocate law reform or to give advice in advance on how best to structure one's activities so that they will be within the law, but quite another to offer instruction in how to break the law and advice on how to conceal the fact. The former does not promote or encourage criminal activity; the latter does.

The authors' clear preference for pentobarbital as the best means of committing suicide does not attract application of s3(3)(d). This is an expression of opinion in support of their belief that that law should be amended to permit seriously ill and elderly people access to this drug as the most dignified and peaceful means of suicide. What does attract application of this provision are those parts of the book that instruct in how to smuggle the drug into the country without detection, how to manufacture drugs in contravention of the Misuse of Drugs Act 1975, how to use drugs in violation of the Agricultural Compounds and Veterinary Medicines Act 1997 and the Hazardous Substances and New Organisms Act 1996, and how to conceal one's involvement with the commission of a suicide, exposing one to prosecution under ss113, 116 and 179 of the Crimes Act 1961. It is these parts of the book that promote and encourage criminal activity.

Chapter 11, *Drug Options – Nembutal*, illustrates the distinction between legal advice and advocacy of law reform on one hand, and encouragement of criminal activity on the other. At the beginning of the chapter, the authors offer information in support of their advocacy of law

reform to allow seriously ill and elderly people access to Nembutal as the most dignified and peaceful means of suicide. They claim that Nembutal is "the drug that comes closest to the concept of the Peaceful Pill". They define the "Peaceful Pill" as "a pill, tablet or mixture that can be taken orally and that is guaranteed to provide a peaceful, dignified death at a time of ones choosing." They believe Nembutal to be "the drug of choice when it comes to dignified, peaceful dying." The chapter provides a history of the use of barbiturates as sleeping pills and as recreational drugs. It then states how the drug works, the available forms of the drug, and where it can be obtained. The authors state that there are no medically prescribed barbiturates in Australia and New Zealand, and that no currently prescribed sleeping tablet will cause death. The veterinary profession still uses the drug to put down animals but the authors state that there is no "legitimate or plausible reason for a vet to provide this drug to any member of the public". The publication clearly describes the differences between the human and veterinary forms of the drug and includes photographic images of the bottles in which each may be available. The authors note that the green dye in the latter form will stain lips and tongue, making it unlikely that the attending doctor will cite natural causes on any death certificate, and potentially implicating a veterinarian in the death. What is conveyed in this part of the chapter can fairly be described as information that supports advocacy of law reform, and advice on how to structure one's activities to comply with the law.

The chapter continues, however, with sections on "Nembutal and the Black Market", "Nembutal on the Internet" and "Nembutal from Other Countries". This part of the chapter contains first-person accounts by people who have purchased Nembutal in Mexico and brought it back with them to Australia in their luggage. In an italicised "authors' note" the authors somewhat disingenuously state that they "are not advocating or inciting readers to break any laws in Australia, Mexico or the US". Instead, they seek to "provide accurate information so that those contemplating such action are in a better position to judge whether this [that is, smuggling] is an appropriate option for them." "Caroline's Story" provides detailed information on the usual price of Nembutal at veterinary supply shops in Mexico, the names under which the drug is marketed, what might occur in the veterinary supply shops when one asks for the drug, the cost of a bus trip to Tijuana, and the types of border checks carried out. Information is also provided on what effect the drug and its packaging have on X-ray machines, metal detectors and sniffer dogs, and the best way to pack the drug in luggage to conceal its presence. The authors then state that "Exit knows of no one who has had their Nembutal confiscated by customs at US – Mexico borders, or on return to Australia. Recent terrorism threats have, however, focused attention on the transport of liquids by air and the situation is likely to change in the future."

While the chapter begins with opinion and information that does not promote or encourage criminal activity, it ends by giving information that directly instructs in how to successfully smuggle a Class C drug across a border, thereby promoting and encouraging activities that the authors acknowledge to be criminal.

The chapter ends by stating that the following chapter offers a way in which people wishing to use Nembutal can take an "alternative approach" to avoid "openly breaking the law", by making the drug themselves. This of course is bad advice because manufacture of the drug is itself an offence. This is acknowledged at the beginning of the next chapter where the authors set out the maximum penalties that could be imposed on conviction in Australia.. The chapter describes in the first person how a group of elderly people manufactured a barbiturate. It describes the synthesis of pentobarbital in terms that people who are not chemists can understand with a little effort: "the synthesis required a period of prolonged reflux...We used a two litre glass reaction vessel with 3 Quickfit taper necks...fitted with an efficient double surface condenser." The chapter contains diagrams with captions such as "the process of synthesis", "preparing the

catalyst", and "cleaning metallic sodium in a zylene bath". Distillation and reflux systems are shown in photographic illustrations. The methods, necessary equipment, precursor chemicals and particular risks in the synthesis are thoroughly described.

Under the sub-heading 'Acquiring Necessary Equipment', the authors note that laboratory glassware is becoming difficult to obtain.

This is a reaction on the part of the authorities to the existence of clandestine laboratories that manufacture illegal drugs (predominantly amphetamines) for commercial gain. Some of the chemical techniques used in the synthesis of the Pill are the same as those used to make amphetamines.

The authors advise careful testing of the prepared substance. The authors then state that Exit International intends to acquire the equipment that will allow them to provide such a service so that home-made or stored barbiturates do not have to be taken to a commercial laboratory. While the process of manufacturing the drug might appear complex and the difficulty involved might deter many readers from attempting this method, the publication notes more than once the advanced age of those involved in the project and mentions that none of the participants had more than undergraduate chemistry qualifications to aid them in their endeavour. This has the effect of presenting the activities as being within the scope of any reader.

Most of the final chapter offers advice on what happens after someone has died. Such advice permits people to plan future activities so that they comply with the law. Parts of the chapter however veer into offering advice on how to conceal activities that have broken the law. It contains information on how to "clean up" after a suicide so that the authorities do not record the cause of death as suicide, and so that the risk of implicating someone else in the death is minimised. In New Zealand, persons engaged in such "clean ups" put themselves at risk of prosecution under s113 (fabricating evidence) and s116 (conspiring to defeat justice) of the Crimes Act 1961. Any subsequent discovery of the activities and items that have been "cleaned up" may reveal some degree of culpability for counselling, aiding or abetting a suicide in contravention of s179 of the Crimes Act 1961.

While the authors go to considerable effort to remove themselves from liability for "advocating or inciting" the reader to engage in criminal activities by means of "authors' note" disclaimers and the use of first-person testimonials to deliver all of the most detailed information and instruction in a more anecdotal fashion, the effect on the reader is not altered. These parts of the book do not simply contain additional information that contributes to the debate about euthanasia. Instead, they provide practical detail on how to commit crime and get away with it. These parts of the book are intended for use in actual situations by readers, and thereby promote and encourage the criminal activities which they describe in detail how to commit and conceal.

Additional matters to be considered

Under s3(4), the Classification Office must also consider the following matters:

s3(4)(a)

The dominant effect of the publication as a whole.

Upon the readers for whom it is intended, the seriously ill and elderly who are considering suicide, the dominant effect of this book will be reassurance, comfort and perhaps even empowerment. It is a well-intentioned reference book written by advocates of legalised voluntary euthanasia. It provides detailed information on various methods of ending one's own life along with comparisons of each method's effectiveness as a means of providing a reliable and peaceful death. Some of the readers for whom it is intended, and others, are likely to find the

book disturbing because of its clinical tone and the extent to which it instructs in the commission and concealment of criminal activity.

s3(4)(b) *The impact of the medium in which the publication is presented.*

The publication is a book. It is portable and the information contained within is easily accessible. The information contained within can be easily disseminated as a whole or in parts as individual sections are able to be copied and distributed.

s3(4)(c) *The character of the publication, including any merit, value or importance it has in relation to literary, artistic, social, cultural, educational, scientific or other matters.*

The publication's treatment of the issue of voluntary euthanasia has some merit in terms of social and scientific matters despite its sometimes over-enthusiastic emphasis on the 'do-it-yourself' ethos of Exit International members. As such it contributes to the ongoing debate on voluntary euthanasia and highlights the realities of end-of-life choices for the terminally ill and the elderly. Weighed against this however are those parts of the publication that describe how to commit, and conceal the commission of, various crimes.

s3(4)(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.*

The publication is intended primarily for use by the seriously ill and the elderly, although it is acknowledged by the authors that the publication will be of interest to the wider public and possibly to those who are depressed and wish to end their lives for reasons other than those normally held by Exit International members.

s3(4)(e) *The purpose for which the publication is intended to be used.*

The book is intended as a source of practical information for those intending suicide, and as a means of advocating the legalisation of voluntary euthanasia in which the seriously ill and elderly have access to a "peaceful pill".

s3(4)(f) *Any other relevant circumstances relating to the intended or likely use of the publication.*

The book is likely to be used as a guide and reference at various Exit International workshops and talks.

Publication may be age-restricted if it contains highly offensive language likely to cause serious harm

Section 3A provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains highly offensive language to such an extent or degree that the availability of the publication would be likely, if not restricted to persons who have attained a specified age, to cause serious harm to persons under that age.

"Highly offensive language" is defined in s3A(3) to mean language that is highly offensive to the public in general.

The publication does not contain highly offensive language to such an extent and degree that its availability is likely to cause serious harm to young persons.

Publication may be age-restricted if likely to be injurious to public good for specified reasons

Section 3B provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

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).

Although the publication contains material specified in s3B(3) to such an extent or degree that its availability is likely to be injurious to the public good for reasons specified in s3B(4), it also describes, depicts, expresses or otherwise deals with matters in s3(1) in such a manner that its availability is likely to be injurious to the public good under that provision unless classified under s23(2)(b) or (c).

New Zealand Bill of Rights Act 1990:

Section 14 of the New Zealand Bill of Rights Act 1990 (NZBR Act) states that 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". Under s5 of the NZBR Act, this freedom is subject "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Section 6 of the NZBR Act states that "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".

Conclusion:

The Peaceful Pill Handbook is classified as objectionable.

The publication is a well-intentioned book that advocates law reform and gives advice to enable the seriously ill and elderly "to make carefully considered and fully informed decisions about their own life, and death." This advice includes comparison of various means of suicide, which is not illegal. The book argues that the law should be changed to permit seriously ill and elderly people access to pentobarbital, a drug the authors consider to be the most dignified and peaceful means of suicide. When advocating law reform or a change in social perception, it is often necessary to describe the benefits of the thing or practice that is outlawed or stigmatised to get the law reformed or the perception changed. Although these parts of the book deal extensively with suicide methods, an "infliction of serious physical harm" in terms of s3(3)(a)(i), they are written in a manner that gives factual advice on how to structure one's activities to be lawful, and that supports the advocacy of law reform. Although reasonably instructional in tone, they do not instruct in the commission of criminal activity. In the hands of its intended readers, these parts of the book are unlikely to be injurious to the public good.

The book does not however appear to distinguish between, on one hand, advocacy of law reform and offering advice on how to structure one's activities so that they will be within the law, and on the other hand, offering instruction in how to break the law and conceal the fact. The former does not promote or encourage criminal activity; the latter does. Parts of the book go beyond advocacy and advice and give instruction in how to get away with committing crime, thereby promoting or encouraging criminal acts in terms of s3(3)(d). Specifically, these parts of

the book instruct in how to smuggle Nembutal into the country without detection, how to manufacture pentobarbital in contravention of the Misuse of Drugs Act 1975, how to manufacture and use cyanide in violation of the Agricultural Compounds and Veterinary Medicines Act 1997 and the Hazardous Substances and New Organisms Act 1996, and how to conceal one's involvement with the commission of a suicide, exposing one to prosecution under ss113, 116 and 179 of the Crimes Act 1961. The delivery of most of this information by means of first-person testimonials, and the tone of advocacy throughout the publication, contribute to the promotion and encouragement of the criminal activities the book describes in such detail.

The public good is unlikely to be injured by those parts of the book that advocate law reform and offer advice. However, when these parts of the book are considered with the parts that give instruction on how to commit and conceal criminal activity, it becomes apparent that the book's availability is likely to injure the public good. Likely injury to the public good lies in the fact that, while the authors do not directly incite or counsel readers to commit suicide by the means described, the detailed and practical information is presented in a manner which may reasonably be expected to be acted upon by some readers. The publication's promotion and encouragement of criminal activities in the pursuit of a peaceful and dignified death increases the likelihood that those crimes will be committed by some readers.

The Classification Office has considered the effects of the Bill of Rights on the application of the classification criteria elsewhere in these reasons. The classification of this publication interferes with the freedom of expression, but this is a reasonable limitation on those freedoms which is demonstrably justified in accordance with sections 5 and 6 of the NZBR Act and reflects the concern of a free and democratic society to limit the availability of publications that promote or encourage criminal acts.

Classification:

The Peaceful Pill Handbook is classified as:

Objectionable.

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