

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

TO: Comptroller of Customs

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Title of Publication: The Peaceful Pill Handbook (New Revised International Edition)

Other Known Title(s): The Peaceful Pill Handbook

Director(s)/Author(s): Philip Nitschke, Fiona Stewart

Producer(s)/Publisher(s): Exit International US Ltd

Medium: Book

Country of Origin: United States

Language(s): English

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**Decision:**

**Objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years.**

**Descriptive Note**

No note.

**Display Conditions:**

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);

and

That the label must be affixed to the package in which the publication is displayed so that the classification is brought to the attention of purchasers;

and

That the publication must be publicly displayed only in a sealed package.

... Please turn over

Direction to issue a label has been given.

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## REASONS FOR DECISION

The publication was examined and the contents were recorded in an examination transcript. A written consideration of the legal criteria was undertaken. This document provides the reasons for the decision.

### Submission procedure:

On 5 February 2008, the Comptroller of Customs submitted to the Office of Film and Literature Classification the publication *The Peaceful Pill Handbook (New Revised International Edition)* for classification under s13(1)(a) of the FVPC Act. On 07 February the Chief Censor instructed the submitter to notify interested parties of their right to make a submission on the publication within 14 working days. The Classification Office reminded interested parties of their right to make submissions by 28 February 2008 in letters dated 11 February 2008. The Classification Office received a letter on 21 February from the Voluntary Euthanasia Society of New Zealand stating that they had nothing to add to the points they made in a submission on the original (unedited) version of the book. Customs stated they would make no submission. Submissions on the unrevised edition of *The Peaceful Pill Handbook* given by interested persons such as the Senior Police Legal Advisor and Peter Brown MP remain relevant to the revised edition. Further detailed submissions were received from Right To Life New Zealand Inc. and Kensington Swan, counsel for the importer of the publication.

In a submission on the original *The Peaceful Pill Handbook* (OFLC 700240) Senior Police Legal Advisor Inspector Alistair Murray 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, which makes a person liable to 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 stated 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 advice 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 submitted that the original book was intended as a reference work that contains relevant information [on suicide methods] and did not seek to influence readers' choices. It submitted that the book should be given "a full clearance", however an age restriction would be acceptable.

A detailed written submission was received on 11 March 2008 from Right To Life New Zealand. In it they contend that the revised publication should be classified as objectionable, believing that its contents "are an incitement to suicide" and that its authors contravene the Crimes Act 1961 in encouraging suicide. They believe that the book could increase the number of people committing suicide and "begin a wave of copy-cat or imitating suicides". They express the concern that, despite the book being aimed at an older audience, it may "find its way into the hands of younger people", those severely depressed or suffering from long term and chronic mental illness. They also believe that the book is offensive to "a substantial minority of cultures and religions" in New Zealand.

The Classification Office received a submission from counsel for the authors on 13 March 2008. They state that the current revised version of the book has been "systematically edited" in order to remove sections of the book that caused the original edition to be classified as objectionable. "By redacting the book rather than publishing an abridged edition, and by allowing the headings to remain, Dr Nitschke has allowed the reader to obtain a sense of the subject matter of original text, as well as the redacted material, without actually having access to that material and without compromising the book's message." They list the sections that have been redacted and claim that all sections "relating to criminal activity, including the undetectability ratings accorded to each method in the Exit RP test, have been redacted". They now believe it would be "difficult to see how the republished book could attract an objectionable classification".

Counsel for the authors further claim that:

28        Clearly the redactions have the effect of reducing, rather than emphasising the aspects of the book which were earlier classified objectionable. It is now clear that the book does not fall within the definition of objectionable under section 3(1), nor can it be deemed to be objectionable under section 3(2) of the Act.

They note that it is the opinion of the author that voluntary euthanasia as it is described in the book, does not constitute "serious physical harm". The book is targeted at the elderly and the terminally ill "investigating end-of-life options" and that compared with the physical harm brought about by such terminal illness, "voluntary euthanasia cannot be viewed as serious physical harm to those individuals who make up the book's target market".

Counsel for the book's authors seek an unrestricted classification for the book.

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 contains the title *The Peaceful Pill Handbook* and the authors' names in white text against a purple toned photographic background of waves on a beach at sunset. In the upper right hand corner is a red oval containing the words "NEW REVISED INTERNATIONAL EDITION". At the lower right hand corner of the front cover is a reference to the book having been "Banned in Australia & NZ". 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'." It also contains a number of critics' responses to the unrevised version of *The Peaceful Pill Handbook*.

The publication is a reference book on various methods of suicide and is aimed at the terminally ill and the elderly. The style of the book is sober, information-based and instructional, however, the authors' advocacy of voluntary euthanasia and assisted suicide permeates the book. Like the original edition, 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 sub-headings are included in italicised sections. There are tables measuring the 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 '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 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, speed of effect 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. All tables and discussions of the Exit RP criteria contain blacked out sections where one of these criteria has been obscured. The total scores are inclusive of the rating for the blacked out sections, however, and considering that the title of the blacked out section on "Undetectability" remains as part of the chapter explaining the Exit RP scores, it is not difficult for the reader to complete the tables.

### **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 revised version of the publication still deals with matters of crime but no longer in a manner that is likely to injure the public good. It provides first-person accounts of Exit International members who have obtained the drug Nembutal by various means and have imported it into Australia. The mechanics of its importation have now been blacked out. 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 provide detailed information on the effects of 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) but no longer provide information on their manufacture and use. The book also contains redacted references to "cleaning 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 publication is now edited so that it avoids direct instruction in the commission of crimes, the manner in which it canvasses the issues indicates the authors' approval of criminal activities in search of a peaceful death for the terminally ill. Whether this constitutes promotion and encouragement of such activities is discussed further below.

### *Matters such as violence*

The publication deals with matters of violence in the form of self-inflicted harm causing death. The publication is a book about how to commit suicide and 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 effect of the detailed anecdotal accounts is disturbing. 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.

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 (New Revised International Edition)* 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 only matters that it considers relevant to *The Peaceful Pill Handbook (New Revised International Edition)* 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 both directly and indirectly in its discussion and detailed descriptions of various methods of suicide. These suicide methods are described in a manner that is factual, clinical 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 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. [Section blacked out] 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. [section blacked out] I was horrified, repulsed and appalled to find myself in the position of having to answer Terry's question." Nitschke writes that Terry did indeed 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 attracted consideration of this provision were those parts of the original version of the book that provided accounts of people smuggling the drug into the country without detection, references to groups of people manufacturing drugs in contravention of the Misuse of Drugs Act 1975, and using drugs in violation of the Agricultural Compounds and Veterinary Medicines Act 1997 and the Hazardous Substances and New Organisms Act 1996. The chapter *After It's Over* in the original version of the book dealt with the issue of concealing one's involvement with the commission of a suicide. Such activities would expose one to prosecution under ss113, 116 and 179 of the Crimes Act 1961. It is these parts of the present version of the book that have been heavily edited and which must be re-examined to determine whether or not the current publication continues to promote and encourage criminal activity.

In Chapter 11, *Drug Options – Nembutal*, 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. As in the previous version of the book, the chapter provides a history of barbiturates as sleeping pills and as 'drugs of abuse' before stating how the drug works. The chapter continues, however, with sections on "Nembutal and the Black Market", "Nembutal on the Internet" and "Nembutal from Other Countries". In this last section, the authors relate "first hand testimonials" from people who have legally purchased Nembutal in Mexico and smuggled it into Australia. In an italicised "Authors' note" they provide a disclaimer, stating that they "are not advocating or inciting readers to break any laws in Australia, Mexico or the US", rather they seek to "provide accurate information so that those contemplating such action are in a better position to judge whether this is an appropriate option for them." The mechanics of drug smuggling have now been blacked out.

Although the chapter expresses a strong opinion that Nembutal should be made available to seriously ill and elderly people and provides factual information about the drug in places where it is legally available, it has been edited to remove advice on how to smuggle the drug across a border. It no longer, therefore, instructs in how to commit a crime. When the absence of actual criminal instruction is combined with the disclaimer and the authors' advocacy of law reform, the chapter can no longer fairly be said to promote or encourage criminal activity.

The chapter ends by stating that the next 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 which 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 indicates through section headings which remain above large blacked out sections that it once described in the first person how a group of elderly people manufactured a barbiturate. A chemical equation for synthesis remains along with sub-headings such as *Equipment*, *Techniques*, *Precursors* and *Acquiring Necessary Equipment*, leaving little doubt as to the nature of the information which has been blacked out on these pages. It has, nevertheless, been removed.

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. The section headed *Cleaning Away* has been blacked out but the following section *Cleaning Away and The Law* remains. Parts of other sections such as *The Suicide Note* have blacked out segments of text. Comments such as "Exit always advises people to write a note 'just in case'" or "It can sometimes be wise to call your doctor for a visit prior to the planned death..." skate very close to providing instruction on how to deceive the authorities about the cause of death. Such an activity would put those involved at risk of prosecution under various sections of the Crimes Act 1961. The authors are however careful not to be specifically instructional with respect to such activities in this revised edition of the publication.

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. Blacked out sections indicate, by means of section headings that remain or by the text that remains adjacent to such obscured segments, the gist of the information that has been removed from this revised edition of the book. The dominant effect of these rather obvious 'censored sections' is that the publication no longer provides practical instructional advice on how to commit particular crimes. A secondary effect, and possibly one as significant to the authors, is that readers are left in no doubt about the authors' opinion of New Zealand censorship law and of the Classification Office's application of it to the first version of this book. This secondary effect is, however, of no concern to the law because it is an expression of opinion. The book no longer provides practical instructional

detail in how to commit crime sufficient to fall within s3(3)(d) of the FVPC Act.

### **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 from the stand-point of advocates for 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. The extent to which the authors have blacked out significant parts of the text will frustrate others. Indeed, the heavily redacted revised edition of the book may well be used by anti-censorship advocates to champion their cause.

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.

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 original edition of the book was 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". Although the revised edition maintains its purpose of

advocating law reform, it has become much less useful as a source of practical information in how to commit criminal activity.

3(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).*

The Classification Office has considered all the matters in s3B(3). The matters that it considers relevant to this publication are

s3B(3)(a)(i) *material that to such an extent or degree describes, depicts, 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;*

and

s3B(3)(a)(ii)

*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;*

The Public Health Directorate of the Ministry of Health sent a written submission on the original *Peaceful Pill Handbook* (OFLC 700240) to the Office on 18 March 2007. The issues raised in that submission remain pertinent to the publication now under consideration. They believed that the unrevised edition of 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." They expressed concern with the step-by-step instructions for carrying out several suicide methods and cited 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 [and which the Indecent Publications Tribunal classified as "not indecent" in 1992<sup>[4]</sup>], found a consistent association suggesting that the book had influenced the choice of suicide method in a number of cases". Further, they believed that the book's rating of suicide methods by 'reliability' and 'peacefulness' would 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.

Despite the author's "word of caution" about the book not being intended for "those who are young and irrational or for people who are suffering from psychiatric illness or depression", there remains a risk of such people reading and being influenced by the contents of the book in making decisions about ending what they may perceive to be legitimate and unendurable suffering. The book's clinical accounting of meticulously planned suicides by various methods, its sometimes self-congratulatory do-it-yourself ethos and its many photographs and diagrams could appeal to young readers, particularly young teenage men. The notoriety of the book's principal author and the taboo surrounding the issue of suicide will only add to the book's appeal for just the readers the author claims it is not intended for. 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. 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 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.

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, this material is likely to be injurious to the public good because 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 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 (New Revised International Edition)* is classified as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years.

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. 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 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. Blacked out sections indicate, by means of section headings that remain or by the text that remains adjacent to such obscured segments, the gist of the information that has been removed from this revised edition of the book. The dominant effect of these rather obvious 'censored sections' is that the book no longer provides sufficient practical instructional detail in how to commit crime to fall within s3(3)(d) of the FVPC Act. A secondary effect is that readers are left in no doubt about the authors' opinion of New Zealand censorship law and of the Classification Office's application of it to the first version of this book. This secondary effect is, however, of no concern to the law because it is an expression of opinion. As repugnant as some members of the public may find the open discussion of voluntary euthanasia, suicide methods and the law, the New Zealand Bill of Rights preserves the authors' right to freedom of expression and to impart the information and opinions contained in the book in its present revised form.

In terms of s3B, however, the book's clinical accounting of meticulously planned suicides by various methods, its sometimes self-congratulatory do-it-yourself ethos and its many photographs and diagrams could appeal to young readers. 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 such 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. 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 life 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.

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, this material is likely to be injurious to the public good because 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.

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 may significantly increase the risk of children and young persons killing or causing serious harm to themselves, others, or both.

#### **Classification:**

*The Peaceful Pill Handbook (New Revised International Edition)* is classified as:

**Objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years.**

#### **Display conditions:**

Where the Classification Office classifies any publication as a restricted publication, it is required under s27(1) of the FVPC Act to consider whether or not conditions in respect of the public display of the particular publication should be imposed.

In considering the issue of public display, the Classification Office must have regard to the matters set out in s27(2) of the FVPC Act, namely:

- (a) The reasons for classifying the publication as a restricted publication;
- (b) The terms of the classification given the publication;
- (c) The likelihood that the public display of the publication, if not subject to conditions, or as the case may be, any particular condition, would cause offence to reasonable members of the public.

The publication has been restricted to an audience of persons aged 18 years and over due to the

likelihood that it would be likely to cause children and young persons to be greatly disturbed or shocked and to increase significantly the risk of them killing, or causing serious harm to, themselves, others, or both. The publication discusses a controversial subject. The book's content is likely to offend many members of the public. More importantly, if it is displayed in a manner that would allow members of the public to pick it up and browse through it, there would be significant likelihood of offence being caused to reasonable members of the public who are not its intended audience, and of injury being caused to those younger persons who are restricted from viewing its contents. Display conditions are therefore imposed on the publication. 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). That label must be affixed to the package in which the publication is displayed so that the classification is brought to the attention of purchasers, and the publication must be publicly displayed only in a sealed package.

Date: 08 May 2008

For the Classification Office (signed):

OFLC No: 800267

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**Note:**

You may apply to have this publication (or these publications) reviewed under section 47 of the Films, Videos, and Publications Classification Act 1993, if you are dissatisfied with the Classification Office's decision.

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

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

[3] Above n2 at para 29.

[4] IPT 92-75, 31 July 1992.

