

Annex to Regulatory Impact Assessment: Countering violent extremism online – changes to censorship legislation to better protect New Zealanders from online harm

Purpose of Document	
Decision sought:	<i>Cabinet policy approval</i>
Advising agencies:	<i>Department of Internal Affairs</i>
Proposing Ministers:	<i>Minister of Internal Affairs</i>
Date finalised:	<i>23 March 2022</i>

Background/Context

This is an Annex to the Regulatory Impact Assessment: *Countering violent extremism online – changes to censorship legislation to better protect New Zealanders from online harm*. This is the RIA for the Films, Videos, and Publications Classification (Urgent Interim Classification of Publications and Prevention of Online Harm) Amendment Act, which came into force on 1 February 2022.

During the Select Committee Phase, a number of amendments were made. One change inserted new section 14A to the principal Act, which provides for a new process for Online Content Hosts (OCHs) to submit online publications for a classification decision. OCHs are only able to use this new process if they have received a take-down notice for a publication that does not yet have a classification decision as specified under new section 13(1)(ba). This change was recommended in the report back from the Governance and Administration Committee¹:

"We recommend inserting clause 5C, to add new section 14A to the principal Act. This amendment would provide a process for online content hosts to submit online publications for a classification decision. It would set out more clearly the process for online content hosts who wish to submit a publication, and would align with the process for officials and others to submit publications (sections 14 and 15 of the principal Act)."

The reason for this change is to allow an OCH who has received a take-down notice to have the right to submit the publication to the Classification office and request that a decision is made. This ensures that natural justice is able to occur.

This policy change is not covered in the previous RIA, which this Annex will seek to cover. The proposed policy change will result in amending the Films, Videos, and Publications Classification (Fees) Regulations 1994² to set an appropriate fee for OCHs that choose to use this new process to seek a classification decision.

¹ https://www.parliament.nz/resource/en-NZ/SCR_115825/9352a3bff85f57da03e82fdb79f1f907e1af3e0b

² <https://legislation.govt.nz/regulation/public/1994/0190/latest/whole.html#DLM195157>

What is the proposed policy change?

The proposed policy change is to incorporate new section 14A into the relevant regulations as this is prescribed under 14A(2). We propose that OCHs who use new section 14A to apply for a classification decision should be charged the same as the current fees for applicants that submit a publication for a classification decision under section 13 of the principal Act. These fees are set in the Fees Schedule of the Films, Videos, and Publications Classification (Fees) Regulations 1994 (the Fees Regulations).

OCHs have always been able to apply for a classification decision via section 13 of the principal Act by leave of the Chief Censor. Section 14A provides for an alternative process for OCHs that receive a take-down notice for a publication without a classification to be able to apply for a classification decision by right. However, OCHs will still have the option to use the standard classification process set out in section 13. This is demonstrated in the process map attached at **Appendix A**.

It is appropriate that the new process under section 14A have the same fees apply as the process under section 13 to for consistency and to avoid OCHs choosing which path they take in applying for a classification based on the applicable fee. Setting fees for section 14A to the same level as the existing fees would avoid incentivising OCHs using the standard classification process instead of the new process.

Currently, there are no fees set for the new process under section 14A. If a fee is not set it would create an anomaly as the only application to not charge a fee. All other application types currently have an allocated fee in the Fees Regulations.

Setting a new fee or changing existing fees for section 14A would not be appropriate at this time as it would create an inconsistency within the existing fees schedule. In addition, Cabinet agreed to retain the current fee levels in the Films, Videos, and Publications Classification (Fees) Regulations 1994 for classifying physical media content [CAB-MIN-0272 refers]. The Cost Recovery Impact Statement attached to this Cabinet paper noted that the next review of the cost recovery regime will be no later than 30 June 2023, and will follow the *Treasury's Guidelines for Setting Charges in the Public Sector*. However, the Department recognises that there is a wider issue of fees needing to be updating for all applications, but this is best done through this upcoming fee review.

What impact will this have?

The impact of the fees will be minimal as it is expected to be rare for a take-down notice to be issued to OCHs where a classification has not yet been made for the publication. In most circumstances the Department's enforcement team will seek the certainty that a classification provides before issuing a take-down notice.

The Department acknowledges that issuing a take-down notice has an impact on freedom of expression which means take-down notices can only be issued for the worst types of content that is already illegal (such as child exploitation material). The Department will ensure the only content to receive take-down notices meets the threshold of objectionable. The Department also has excellent working relationships with the majority of large tech platforms and we want these relationships to continue to be maintained. This means ensuring that the take-down notice powers are not misused.

The Department will continue to have the ability to seek a classification decision concurrently with issuing a take-down notice that relates to a specific publication. In these circumstances, the cost would continue to be met through allocated crown funding. As mentioned above, a review of funding of all classification activities is to be taken no later

than 30 June 2023. This will provide the opportunity to adjust fees if it is appropriate to do so.

Consultation

We have conducted agency consultation on this annex and have received support for the approach. Throughout the development of the Fees Regulation we also did targeted consultation with the Office of Films and Literature Classification. We also worked extensively with tech platforms during the finalisation of the take-down notices.

Responsible Manager(s)

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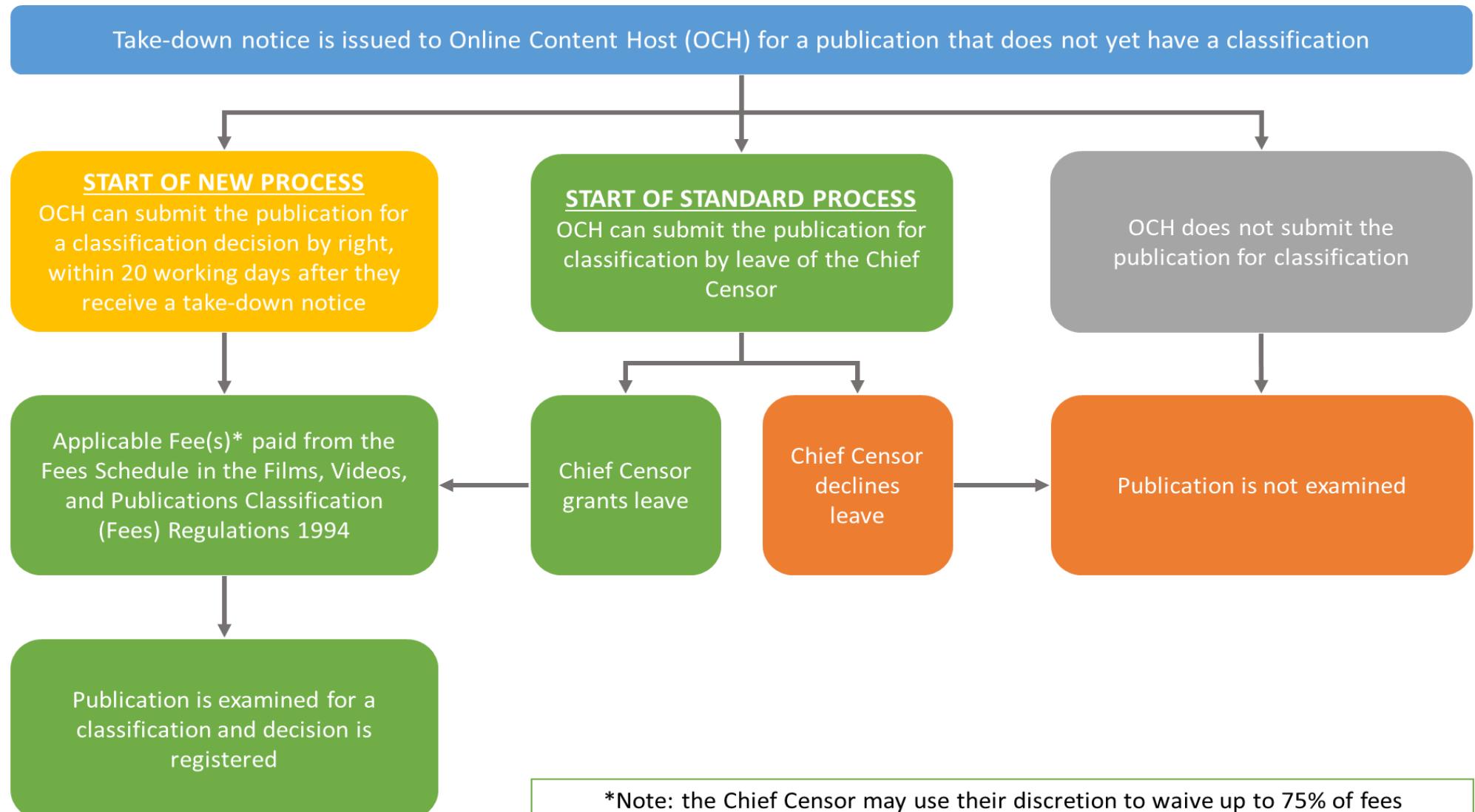


23 March 2022

Quality Assurance

Reviewing Agency:	The Department of Internal Affairs
Panel Assessment & Comment:	<p>The Department's Regulatory Impact Analysis (RIA) panel (the panel) has reviewed the <i>Annex to Regulatory Impact Assessment: Countering violent extremism online – changes to censorship legislation to better protect New Zealanders from online harm</i> (Annex RIA) in accordance with the quality assurance criteria set out in the CabGuide.</p> <p>The panel members for this review were:</p> <ul style="list-style-type: none">• Sam Miles, Principal Policy Analyst (Chair)• Graham Neilsen, Senior Policy Analyst (Policy member)• Adan Souza, Senior Policy Analyst (Policy member)• Grace Turner, Policy Analyst (Shadow member)• Amir Nagh, Policy Analyst (Secretariat) <p>The panel considers that the information and analysis summarised in the RIA <i>meets</i> the quality assurance criteria.</p> <p>The Panel considers that the Annex RIA meets the RIA criteria. The Annex RIA is clear and concise and demonstrates that suitable consultation was undertaken. The Panel considers that the extent of analysis and rationale is appropriate for the proposal under consideration.</p>

Appendix A: Submission of Publications Processes



*Note: the Chief Censor may use their discretion to waive up to 75% of fees