

THE SOCIETY FOR PROMOTION OF COMMUNITY STANDARDS INC.

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Submission to:

Mr Brendan Boyle
Secretary of Internal Affairs
Department of Internal Affairs
Wellington

15 May 2008

The Society has sought leave under s. 47(2)(e) of the Films, Videos, and Publications Classification Act 1993 (“the Act”), to apply to the Film and Literature Board of Review (“the Board”) for a review of the classification of the highly controversial pro-euthanasia book *The Peaceful Pill Handbook* (New Revised International Edition) by Philip Nitschke and Fiona Stewart. An earlier version of this book was banned in New Zealand by the Office of Film and Literature Classification (“the OFLC”) in a decision dated 18 March 2007 (OFLC 700240) and it remains banned. It was also banned last year in Australia, in a unanimous decision issued by the seven-member Australian Classification Review Board.¹

The Society wishes to set out some of our reasons for seeking a reclassification of the New Revised International Edition of this book which has been classified R18 in New Zealand by our Chief Censor’s Office in its decision dated 8 May 2008 (OFLC No. 800267). In summary we contend that:

- 1) A *prima facie* case for a reclassification of the book can be established,
- 2) The book should be classified “objectionable” under s 3(3) and 3(4) of the Act.
- 3) Professional agencies and senior qualified experts working in the field of youth suicide prevention, “at-risk” youth (15-17) and young adults (18-24 years), mental health services and Police Legal Services and drug law enforcement, should be asked by the Board of Review to make submissions on the classification of this revised edition, in the light of the acknowledged potential of the book to influence vulnerable at-risk individuals to commit suicide, aid and abet suicide (a criminal offence), or be involved in other forms of serious physical harm.
- 4) It is in the public interest for a thorough review of the classification to take place.

1) The *Prima Facie* Case for Review.

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 younger viewers, especially those already contemplating

¹ See Classification Review Board Media Release dated 24 February 2007

<http://www.classification.gov.au/resource.html?resource=952&filename=952.pdf>

suicide or considering assisting others to commit such acts. Aiding and abetting someone to commit suicide and any attempt to cover up such involvement, are criminal offences in New Zealand (see later discussion). 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 concept of a publication serving to “promote or support” or having the tendency to promote or support a defined activity or act, is integral to s. 3(2) and s3(3) of the Act – both sections setting out the nature of content that constitutes a publication “objectionable”. For example s3(3)(d) refers to depiction or description that “*promotes or encourages* criminal acts..” [Emphasis added].

The Society supports the Public Health Directorate of the Ministry of Health's conclusion when it stated in its written submission of 18 March 2007 on the *unrevised* book, that it should be classified as objectionable under s3 of the FVPC Act, because: if made 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.”

The Chief Censor's Office in its latest decision on the new *revised* edition (OFLC Decision No. 800267) notes:

“The issues raised [by the Ministry in 2007 regarding the *unrevised* book, noted above] **remain pertinent** to the publication **now under consideration.**” [Emphasis added]

The Society contends that the New Revised International Edition should be banned for the same reasons raised by the Ministry (quoted from above) with respect to the earlier *unrevised* version. The removal by the author of sections of the earlier book that had been identified as problematic by the Chief Censor's Office, have not significantly changed the overall impact and dominant effect of the publication as a whole.

The Society shares the serious concerns of the Ministry of Health, that in the confusion created by the *unrevised* book over the concept of suicide and euthanasia, young New Zealanders will be drawn to it to examine ‘exit strategies’ – referred to as “suicide” methods, to address their personal problems of depression etc. The Society contends that these concerns apply equally to the new edition.

Despite the publisher's warning note in the revised book that it is not intended for readers suffering depression etc., its wide availability through New Zealand bookshops and via the internet, and the fact that it is intended to be resource guide and workshop manual at Exit meetings to be held throughout the country; **will ensure that it does in fact fall into the hands of many vulnerable young people aged 18 –24 years of age.** It is naïve to suggest that at-risk youth in these categories have the maturity and level of discernment needed to be able to avoid being drawn into the culture of death, self-harm and quick-fix ‘solutions’ offered by the exit strategies espoused in *The Peaceful Pill Handbook*

(revised). Many youths in this age group already regularly fall foul of the law due to irresponsible, mindless, and anti-social behaviour.

The OFLC states in its classification decision on the *revised* book with reference to s 3(4)(a) of the Act: **“the dominant effect of the publication as a whole” ...“upon readers for whom it is intended, ill and elderly who are considering suicide” is to empower them to commit suicide**, and comfort and reassure them over the period leading up to the point that they can implement this horrendous exit strategy (suicide) by using meticulously planned strategies outlined in the book. The book is also designed to provide solace and relief to the consciences of those who engage in the crime of assisting others to commit suicide, either by flouting the law by accessing, importing or manufacturing banned drugs to be used in suicide strategies, or assisting in other ways. The cold, callous tone of much of the descriptive content on suicide methodologies is “chilling” as critics have noted.

The Society contends that while it is pertinent for censors to take into consideration the readers for whom the book *may* have been intended, as the OFLC decision has done, they must not fail to seriously consider the question of the protection of the wider “public good” from injury. The OFLC report has unfortunately failed to address properly the “dominant effect of the publication as a whole” upon those readers who access the book who do *not* fit into the category of those for which the book was *not* intended – those who are *not* elderly, sickly or suffering age-related debilitations and trauma.

The revised edition of the *Peaceful Pill Handbook* does pose a very real danger to many young teenagers and young adults (18-to 20 years of age) contemplating suicide and this has been acknowledged in the submissions to the OFLC by the Ministry of Health on the *unrevised* book, criticisms which we have noted earlier, the OFLC acknowledges **“remain pertinent” to the revised new edition of the book.**

The Ministry wrote: “Studies of the impact of *Final Exit*, another book promoted by Dr Nitschke, advocating suicide for those who are terminally ill [and which the Indecent Publications Tribunal² classified as “not indecent” in 1992], found a consistent association suggesting that the book had influenced the choice of suicide method in a number of cases.” Furthermore, 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.”

The new edition of the *Peaceful Pill Handbook* continues to categorise suicide methods in a similar fashion to its earlier version, now banned, and that found in *Final Exit*, providing step-by-step meticulously detailed instructions on how to effectively commit suicide. The Ministry of Health’s submission cites research into the association between portrayal of suicide in the media and increases in suicides using these methods. This was acknowledged by the Associate Minister of Health, Hon. Jim Anderton in a press release

² *IPIT* 92-75, 31 July 1992

dated 22 November 2007. In releasing the shocking statistics for New Zealand suicide rates at the 5th National Suicide Prevention Symposium in Wellington, he stated:

“Any suicide remains a serious concern and is a tragedy for family and friends. **In 2005, 502 people died by suicide.** Those who had particularly high rates were those aged between 15 and 44, along with Māori and those living in the most deprived areas of New Zealand. Men also had higher rates than women – for every three male suicides there was one female suicide’.... NB: **There is evidence that some types of media coverage of suicide can increase suicide rates.**”³ [Emphasis added]

The risk of imitation by young persons and young adults (18 –24) of the self-harm outlined in the revised *Peaceful Pill* book, particularly those less complicated methods of suicide such as the use of an exit-bag, is “significant” as the Classification Office acknowledges in its recent 8 May decision.

The rate of suicides among New Zealand young people is shocking.

In 2005 global suicide rates among adolescents in the 15-19 age group, according to the World Health Organization (WHO) Mortality Database, were published and the results examined (*World Psychiatry*. 2005 June; 4(2): 114–120). **Data for this age group were available from 90 countries** (in some cases areas) out of the 130 WHO member states.

Suicide numbers and rates per 100,000 young persons aged 15-19 **in the 63 countries (areas) for which data are available for the year 1995 put New Zealand at the second highest position.**⁴ It was second highest for rates in both males and for males and females combined.

Suicide numbers and rates per 100,000 young persons aged 15-19 **in 90 countries** (areas), according to the WHO Mortality Database, February 2004 (latest available data for each country or area), put **New Zealand at number six for combined male and female rates.** There were only five countries with rates higher than New Zealand’s rate: Sri Lanka (highest), followed by Lithuania, Russian Federation, Kazakhstan, and Luxenboug.⁵

Youth (15 to 24 years-old) suicide is a tragic outcome - the loss of young lives to families, schools, communities and the wider society. Suicide matters not only for the consequences of the act itself but because of the anguish, depression, hopelessness and other negative experiences associated with suicide that occur amongst New Zealand youth contemplating, or at-risk of, suicide.

³ <http://www.beehive.govt.nz/release/suicide+statistics+released>

⁴ <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1414751&rendertype=table&id=T2>

⁵ <http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1414751&rendertype=table&id=T1>

Research indicates that suicide is associated with depression, hopelessness, adjustment difficulty and severe stresses or life crises, including relationship break-ups. Bullying and intimidation in the peer group have been implicated in youth suicide.⁶

Young people experience suicide and self-inflicted mortality rates well in excess of those in the rest of the population. In 1996 there were 144 deaths of young people aged 15 to 24 years that were attributed to suicide. This represented 26.6 percent of total suicide deaths, while 15 to 24-year-olds made up only 15.6 percent of the total population.

Suicide and self-inflicted injury is much more common among young men than among young women. In 1996 males aged 20 to 24 years experienced the highest suicide mortality rate of any age group. At 49.7 deaths per 100,000 the rate for this group was more than four times greater than the rate of 12.4 per 100,000 recorded for females the same age. Males aged 15 to 19 years experienced the second highest mortality rate from suicide in 1996, with a rate nearly twice that of their female counterparts (29.2 per 100,000 compared with 16.2 per 100,000).

<http://www.stats.govt.nz/analytical-reports/young-new-zealander/suicide-rate.htm>

For Suicide Facts: 2005-2006 data is available on the Ministry of Health's website:

<http://www.moh.govt.nz>

The Presbyterian Church of Aotearoa-New Zealand sums up the crisis in this country on its current website, as follows:

- Suicide is second only to car accidents as the main cause of death among young people (aged 15-24).
- On average two young people die every week as a result of suicide. Each week, a further 26 intentionally harm themselves.
- NZ has the highest suicide rate amongst OECD countries for females aged 15-24
- The rate of teenage childbearing in New Zealand is high by OECD standards
- NZ has the second highest abortion rate (behind the US) for females aged 15-19 years
- Over the last 20 years the youth suicide rate has increased⁷

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http://www.educationcounts.govt.nz/indicators/education_and_learning_outcomes/labour_market_and_social_outcomes/youth_suicide

⁷ <http://www.presbyterian.org.nz/4602.0.html>

It is not as though authorities in New Zealand have not known about the problem of youth suicide. News of this social disaster has been widely reported overseas. For example, on 15 July 1995 *The New York Times* carried an article by Philip Shenon, headlined “New Zealand Seeks Causes of Suicides by Young.” It stated:

“For every 100,000 New Zealanders aged 15 to 19, about 16 kill themselves every year – a rate 40 percent higher than the United States, 50 percent higher than Australia and four times that of Japan, For New Zealanders ages 15 to 24, suicide is the second most frequent cause of death, after motor vehicle crashes.

“And the suicide rate may actually be much higher, since many car crashes here involving teen-agers are believed to be suicides, with the drivers intentionally taking their cars over cliffs or crashing them into alls.

“On one neighbourhood of Auckland, New Zealand’s largest city, eight teen-agrs have killed themselves so far this year.

“Many New Zealanders suggest that the suicide figures show something has gone terribly wrong in the way they raise their children.”

A two-day symposium was held at the Wellington School of Medicine on 21 and 22 November 2007, organised by Suicide Prevention Information New Zealand (SPINZ), to encourage individuals, communities, and organisations to work collaboratively to enhance suicide prevention efforts in New Zealand. The latest New Zealand suicide facts available from the Ministry of Health for 2005–2006 were released on Thursday 22 November by Associate Minister of Health, the Hon Jim Anderton, at the fifth National Suicide Prevention Symposium in Wellington. Judi Clements, Chief Executive of the Mental Health Foundation, responded to the findings saying:

“This data means that we still need to be vigilant about access to ***the means of suicide*** as well as reaching those who may be at risk of because of depression and other known risk factors.”⁸ [Emphasis added]

The Society challenges officials in the Department of Internal Affairs considering the contents of *The Peaceful Pill Handbook* (New Revised International Edition) to carefully consider what Ms Clements has stated.

⁸ Press release from Mental Health Foundation
<http://www.scoop.co.nz/stories/GE0711/S00114.htm>

Now that it has been rated R18, Dr Nitschke's book will be available to New Zealanders through numerous retail bookshops, the Exit International website and other sources, providing them with easy access to "the means of suicide", details on how to assist suicide etc. the very problems we seek to address – the staggeringly high youth suicide rates in New Zealand – will be made much worse. There is a widespread consensus among suicide prevention agency professionals and mental health experts that the dissemination of detailed information about how to commit suicide, via the media etc, leads to greater numbers of suicides, and those methods of suicides highlighted are more frequently employed.

Suicide Prevention Information New Zealand (SPINZ), a service of the Mental Health Foundation that aims to assist communities and services throughout New Zealand to prevent suicide by providing them with best practice Information. It contributed to the Ministry of Health submission to the OFLC on the unrevised version of the *Peaceful Pill*, calling for it to be banned. SPCS believes it has the full support of such agencies in calling for the revised book to be banned. There is a prima facie case for the banning of this book, as its content is "objectionable" – being "injurious to the public good."

2). "Objectionable" under s 3(3)(i) and 3(4) of the Act.

Introduction

Section 3(3) of the Act leading into 3(a)(i) states... "In determining, for the purposes of this Act, whether or not any publication ... is objectionable particular weight shall be given to the extent and degree to which, and the manner in which, the publication – (a) describes, depicts, or otherwise deals with – (i) "...**the infliction of serious physical harm**".

Section 3(3)(d) identifies a publication as being potentially "objectionable" if it "promotes or encourages **criminal acts**"

S. 179 of the Crimes Act 1961 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."

S. 4 of the FVPC Act lists factors that must be taken account of when considering whether or not a publication should to be ruled "objectionable", once activities or acts listed in s.3(3) have been identified as problematic, having noted the extent, degree and manner of the etc. Pertinent to the classification of revised *Peaceful Pill Handbook* is s. 3(4)(a) "the dominant effect of the publication as a whole", (c) "the character of the publication, including any merit, value..." (e) "the purpose for which the publication is intended or likely use of the publication".

Discussion

S. 3(3)(i) Suicide is obviously the most extreme form of serious physical harm one can commit or cause others to commit. A book that purports to advance a case for euthanasia, but as the Ministry of Health submits, uses the term ‘suicide’ throughout, is totally dishonest. The deliberate conflation of these terms in the book by the authors has outraged those dealing with suicide-prevention, who have had input into the Ministry of Health’s submission to the OFLC dated 18 March 2007.

The revised *Peaceful Pill Handbook* is a HANDBOOK (how-to-do or DIY) for methods of committing suicide and assisting those who wish to do so. 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 author’s intentions in writing the book have been clearly stated in news media statements by Dr Nitschke. He says it is intended to be instrumental in providing advice on ways and means (DIY) to people who are considering or who may wish to consider the means of committing suicide.

The advice contained in the book – meticulously detailed step-by-step instructions – and necessary intention of those giving advice – coupled with the commission or attempted commission of suicide “*in consequence thereof*”; would be sufficient to establish criminal liability on the part of its authors. It would not be a defense for the authors’ publisher or the authors facing a criminal charge of inciting suicide, to depend on the intent of the person committing the suicide. Distributors or others associated with the delivery of the book to the end user could be criminally liable if they have the necessary intent.

It is absurd and dishonest of defenders of the book to claim that the original book was intended merely as a reference work containing relevant information on suicide issues and did not seek to influence readers’ choices. Counsel for the authors in a submission to the OFLC dated 13 March 2006, state:

“By redaction the book rather than publishing an abridged edition, and by allowing the headlines to remain, Dr Nitschke has allowed the reader to obtain a sense of the subject matter of the original text, as well as the redacted material, ***without actually having access to that material and without compromising the book’s message***.” [Emphasis added].

And what is the book's message?

The Product description of Amazon.com states:

“The Peaceful Pill Handbook draws on the latest research on end of life choices, ***to bring the reader a range of practical and useful strategies***. By applying Exit's unique Reliability and Peacefulness Test; readers can compare methods including Nembutal from Mexico, the use of Helium, the Dignitas service of Switzerland, prescription drugs and the DIY Peaceful Pill. This new edition also contains full colour photos of Mexican drug names and the latest labelling.” [Emphasis added]⁹

The “practical and useful strategies” Dr Nitschke advocates include escorting people to places overseas where banned drugs can be obtained and encouraging them to import them for use in “exit strategies” (suicide). He regularly encourages and incites people to break the law. He caused controversy in New Zealand when he announced plans to accompany eight New Zealanders to Mexico and help them purchase the potentially life-ending drug Nembutal.¹⁰

The New Zealand Medical Council has in the past complained to the health ministry about Dr Nitschke visiting and holding workshops in New Zealand and voiced concerns prior to his recent visit here to promote his book..

Dr Nitschke boasts that on the basis of information he has supplied to people through his book and seminars, that about 100 Australians made the Nembutal trek to Mexico last year and another 20 have done so this year. And this high number is in spite of the book being banned in Australia! He said most of those people were in their 70s and 80s, not suffering from a terminal or disabling disease but simply preparing for the future. He said:

“In our workshops, we encourage people to make the trip while they're still healthy ... otherwise, if they get sick and rely on their families to smuggle in the drug, they're putting their wives or children at risk of being charged with assisted suicide.”¹¹
[Emphasis added].

Having obtained an R18 classification for the Revised ***Peaceful Pill*** in New Zealand, Dr Nitschke's told the media he is “thrilled”. His strategy is very clear. He has made this revised version available on the internet for download to circumvent Australian censorship laws and

⁹ <http://www.amazon.com/Peaceful-Pill-Handbook-Revised-International/dp/0978878825>

¹⁰ ***NZ offered Mexican Suicide Drug Trip***. *The Age* (2007-02-06).

¹¹ <http://www.theage.com.au/news/national/illegal-book-heads-through-internet-gateway/2007/03/31/1174761817937.html>

make a mockery of the censor's ruling in New Zealand. It remains an offence under the Act for anyone in New Zealand to distribute age-restricted material to those under age.

In an article by John Elder published in *The Age* and entitled "Illegal book heads through internet gateway" the motivation of Dr Nitschke to circumvent the law and incite people to commit criminal acts is made clear.

"THE outlawed euthanasia manual *The Peaceful Pill Handbook* will soon be available as a downloadable document from the internet via Google Books. The deal with Google Books was made in the US last week by the book's author and euthanasia campaigner Dr Philip Nitschke, who said the download version, illegal under Australian law, would cost about US\$30 (\$A37)....

"The download version will be illegal but people will take that risk because they feel they won't be tracked down," said Dr Nitschke. "We've heard there has been some trouble with buying it on Amazon ... from people not receiving books."¹²

The question of an author's or publisher's supposed *good intention* in relation to a publication is not sufficient to override facts that lead to it being deemed "objectionable". If the "dominant effect of the publication as a whole" is "injurious to the public good", it can be classified "objectionable" under ss.3(3) and 3(4). In this case the Society contends that there is a *prima facie* case that an R18 age restriction is insufficient to prevent injury to the public good. The Society wants the book banned.

According to the OFLC decision dated 8 May 2008, counsel for the authors:

"... note that *it is the opinion of the author [Dr Nitschke] that voluntary euthanasia as it is described in the book, does not constitute "serious harm"*. The book is targeted at the elderly and the terminally ill "investigating end-of-life opinions" 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".

However, committing suicide does constitute "serious harm" – is unquestionably the most extreme form of self-harm. The options outlined by Dr Nitschke are set out as suicide options throughout his book. Clearly the author's intention is, as the Senior Police Legal Advisor submitted, was to be instrumental in persuading readers that committing suicide was

¹² <http://www.theage.com.au/news/national/illegal-book-heads-through-internet-gateway/2007/03/31/1174761817937.html>

a viable option and aiding and abetting such activity, as exemplified by the author's own endeavours, was an honourable service to others.

It is very telling that Counsel for the book's authors, in their submission to the OFLC, sought "an unrestricted classification for the book". This convinces the Society that sadly, Dr Nitsche has no real understanding of the real potential his book has to cause serious injury and harm to the public good. Why would any reasonable person with a compassionate concern for those who run a very high risk of being adversely impacted by this book – leading them to commit suicide – ever want an *unrestricted* classification for such a book? Is there a commercial motive here?

3) Professional agencies and senior qualified experts working in the field of youth suicide prevention.

On 7 February 2008, the Chief Censor instructed the Comptroller of Customs to notify interested parties of their right to make a submission on the revised *Peaceful Pill Handbook* within 14 working days (by 28 February). Submissions were received on the original book (unrevised), according to the OFLC report, from Senior Police Legal Advisor Inspector Alistair Murray, The Voluntary Euthanasia Society of New Zealand, Right to Life New Zealand Inc., Counsel for the book's authors, Kensington Swan, Mr Peter Brown MP and the Public Health Directorate of the Ministry of Health.

According to the OFLC decision, submissions on the revised book were only received from Right To Life New Zealand Inc, and Kensington Swan, counsel for the importer of the publication.

In their submission to the OFLC, counsel for the authors list the sections that have been redacted from the earlier banned book and note that Dr Nitschke claims that all sections "relating to criminal activity, including the undetectability ratings accorded to each method in the Exit RP text, have been redacted".

Even if such redactions have all been made, the "dominant effect of the [revised book] as a whole" on vulnerable youth and especially those contemplating self-harm (suicide). remains the same as for the earlier banned version. The risk of imitation by young persons of the self-harm methods meticulously explained in the revised version, remains "significant", as the OFLC report of 8 May 2008 notes, "particularly those less complicated methods of suicide such as the use of an exit-bag."

4). **The public interest.**

Parliament, for very good reasons, adopted into the Act a mechanism by which concerned citizens and others could seek a review of a classification decision issued by the Chief Censor's Office. That mechanism is found, in part, in s. 47(2)(e) of the Act.

The New Revised International Edition of Dr Nitschke's book, with its redactions, blacked out with headings retained, appears to be designed to titillate and incite the curious minds of those who are driven by a fascination for suicide – one of the few remaining so-called “taboo” topics – and an abhorrence of any form of censorship. The format chosen, highlighting deleted passages is an arrogant affront to the censorship laws in New Zealand. It will ignite the fury of those vehemently opposed to all forms of censorship and spawn a plethora of internet blog postings etc. purporting to, or actually disclosing the sections of the book that have been redacted. Dr Nitschke will be thrilled with such an outcome as it will put his book once again into the media spotlight and boost worldwide sales. The unrevised banned version of the book will become hot property and market forces will fuel an ever increasing perverse interest in those passages in the revised book that have been blacked out. These sections undoubtedly will soon be available for internet download, making a mockery of the classification and censorship laws.

It is in the public interest for this controversial book, which has an immense potential for causing untold injury to the public good, to be reexamined for classification by the nine member Film and Literature Board of Review. The book has no merit whatsoever.

The Society is not opposed to healthy, robust and informed debate on the subject of euthanasia but it, like all those agencies involved in suicide-prevention, wants this book reclassified by a Board that can ensure significant input in relation to the revised publication under consideration. Interested parties were only given 14 working days to make submissions on a book which they had never had the opportunity to view, let alone have time to import from a dubious website that has regularly flouted the law.

The Society is distressed that the OFLC has not seen fit to even retain a copy of Dr Nitschke's book that it has classified R18, when it must have been aware that such a controversial decision would undoubtedly be challenged.

