

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

TO:



Title of Publication: Mihi Collected Poems
Other Known Title: Mihi: Collected Poems
Publisher: Penguin Books NZ Ltd
Author: Hone Tuwhare
Format: Book
Country of Origin: New Zealand
Languages: English, Maori



Decision:

Unrestricted.

Display Conditions:

Not Applicable.

Descriptive Note:

No note.

Submission procedure:

An application to submit the book *Mibi: Collected Poems* for classification was made to the Chief Censor on 31 January 2005. The applicant was unable to provide a copy of the book as it was out of print but did supply excerpts thought relevant. Three pages of photocopied material were submitted. Two contain excerpts from *Mibi: Collected Poems* which are mostly lines or parts of verses considered to be unacceptable, and one is a poem by Hone Tuwhare from another publication which has not been submitted.

The Classification Office sourced a copy of *Mibi: Collected Poems*. On 15 March 2005 the Chief Censor granted leave for the book to be submitted under s13(1)(c) of the Films, Videos, and Publications Classification Act 1993 (the FVPC Act).

Under s20(1)(a) of the FVPC Act, the Secretary for Internal Affairs has the right to make written submissions in respect of any publications submitted to the Classification Office. On 15 March 2005 the Classification Office invited the Secretary for Internal Affairs to make a submission. The Classification Office did not receive a submission regarding the classification of the book within the specified time, and treated this as an indication that the Secretary did not wish to make a submission. The Classification Office wrote letters to the author, Hone Tuwhare, through his publisher, and to the publisher, Penguin Books (NZ) Ltd, on 15 March 2005, inviting them to make written submissions on the classification of the book. A response was received from Penguin Books stating that the address of the author was unknown. The letter also stated that that *Mibi: Collected Poems* was a major collection of one of New Zealand's finest poets and that he (the publisher) believed the submission for classification to be frivolous.

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.

Synopsis of the submission:

The applicant states

I have no commercial or professional interest in the publication. My sole interest is as a citizen concerned about the increasing use of explicit sexual descriptions and foul language in every aspect of life.

My concern increases when I read a published work such as *Mibi: Collected Poems* containing blatant filth and foul language, and then discover that this wins a prize. It seems that any such work is generally considered to be 'important', a New Zealand icon, whether or not it actually deserves a prize. Simply being written in, about, and by a New Zealander gives it immediate 'mana', regardless of any possible merit.

My immediate concern is aroused since I have heard that the book is available in a Wairarapa school. It shocks me that this type of language and view of the sexual act is available to young minds – it can only distort the true value of the sexual act. Given that there is much government concern regarding teen sex,

abortion, STD's it is impossible to accept this work as suitable for young minds. We only get one chance to guide them to the best future.

She also states that she has a concern about the classification of publications “with particular regard to the level of common decency and social acceptability”.

An article from *The Opinion* (dated September/October 2004), a small bi-monthly newspaper, was enclosed with the applicant's submission. It is by Colin Robertson who derides the award of a Prime Minister's Prize for Literary Achievement to Hone Tuwhare whom he feels is not deserving of it as his poetry contains "images that were objectionable, and in some cases pornographic." The applicant states that she read the article first, then asked for the journalist's "extracted material", and from this she concluded that Colin Robertson was correct. She then decided to pursue the matter with the Classification Office. The applicant also attached to her submission a copy of a letter she wrote to the Prime Minister, the content of which reflects her submission.

Description of the publication:

The publication is a soft cover book entitled *Mihi: Collected Poems*. It measures 200mm by 130mm. The front cover is designed in black, red and white and has the author's name, Hone Tuwhare, at the top in white on black; the title is red on white underneath; and the bulk of the page is a charcoal representation of a heart in a thin, rapidly etched frame. The shaded surface on which the heart balances, spills out from the lower right hand side of the frame towards the edge of the cover. The illustration is by the artist Ralph Hotere. A small oval logo in orange, white and black centred at the very bottom of the cover features the penguin symbol of the publisher.

The spine contains the title and the author's name in black on white.

The back cover is also in black and red print on white and features a bold frame taking over the top two-thirds of the page within which is a black and white photograph of the head and shoulders of the author and information which states that the collection is of his “best poems over the years” and also includes some new works. The lower third of this cover contains acknowledgements of the illustrator, Ralph Hotere; the cover designer, Richard King; and the photographer Gil Hanly. It also shows the Penguin Books logo, a barcode and a recommended price.

The publication contains 174 pages of selected poems from the author's oeuvre up to 1987. Ten pages at the beginning of the book contain a title page, biographical details, publishing information which states that the book was first published in 1987, a dedication, and a full list of contents.

The work within the publication is divided into eight numbered sections each containing up to 22 poems, most of which are one page long. The sections are sorted into un-named themes some of which are clearly evident such as death and dying, lands afar, love and romance, whanau and whanaungatanga, and relationship with the land. Many of the poems bring a distinctly Maori perspective to experiences, but there are also layers of political and emotional response to multicultural and working class concerns, and to human rights issues.

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

Matters such as sex

There are references to sex, and imagery pertaining to sex, in approximately 16 of the poems. Section 6 beginning on p 123, is introduced by a Hotere sketch of a heart, and is a run of poems about romance, love, relationships, and sexual attraction. Most are about deep feelings and describe elements of romantic and sexual appeal within metaphor and imagery of the natural world, Biblical reference, and Maori mythology. The poet's propensity to be earthy and frank is present in most, and he also uses humour such as in the short poem *Hay Fever* where he observes "It wasn't the wind that shook the barley / but Jennifer threshing / and Charlie piling". Here, the layers of sexual innuendo and pun are simple, yet clever, in the brevity of a few carefully selected words. Another poem centred on sex and tamed by humour, *Mani makes it with the Death Goddess*, links Maori mythology with a nod to an old nursery rhyme.

My cock install
My life in thrall
In thee I thrust
Indeed I must

"Who saw him die?"
'I,' said the fantail,
flip flop. 'I saw
him die,' plip plop.
'laughed my head off,
when he got the chop'.

In *cummings* the title of which pays homage to the acclaimed American poet,

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

e e cummings, and is also a pun on sexual activity, Tuwhare speaks fondly of the difference between man and woman as he relates a sexual encounter. The poem is elegant and complex with most of it dwelling on the attraction of his partner and the pull of his own reactions. These last lines pick up the pace and deliver the rhythm of the final moments:

...and the elegant frenzy of your up and down slow quick
yair and I really dig that corny horny action
when you tuck yourself and me
away

These relatively explicit lines coming after some deep and sensual description where the woman is admired and revered, capture the poet's appreciation of his partner in a more earthy way. The poem's essence and context are of a manner which applauds intimacy and this alleviates the effect of the more base vernacular. This is also the case with other sexual references and allusions where the poet's use of language spills into colloquial speech, for example, when talking of a lover in *Love Pome* "...shuddering balls: Woman you unsex / me farting glib and gustily..." The woman's so-called improprieties are next described as "comely" and "homely" and the poet's appreciation of this is evident.

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). This publication does not fall within s3(2) because it contains none of the matters listed therein.

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

³ Above n2 at para 29.

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). This publication does not fall within s3(3) because it contains none of the matters listed therein.

Additional matters to be considered:

Under 3(4) of the FVPC Act, the Classification Office must also consider the following additional matters:

s3(4)(a) The dominant effect of the publication as a whole.

The publication is a selection of work from an acclaimed poet. The poems are clustered into themes, such as expressions of love, earthy delight in sexual connection, approaches to loss, death and dying, assessment of nationhood, love of the land, social and cultural issues and notions of morality. The dominant effect is of a complex collection of poetry celebrating the richness and depth of the experiences and observations of everyday life.

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

The publication is a 174 page book of poetry. Poetry is usually only accessed by those with an interest in it, or those who have been guided to it by educators and mentors. As a book it has portability and may be accessed freely and frequently.

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 has significant literary, artistic, social and cultural, and educational merit. The author is an acknowledged New Zealand poet who has been published since 1964. He was the first Maori poet to be published in English. His work values and reflects aspects of each of the two Treaty cultures. *Mihi: Collected Poems* has been favourably reviewed by Ronda Cooper, *Listener* 118(2489): 78 (31 October 1987), Bernard Gadd, He Mihi ki Hone Tuwhare (review in verse) *Crosscurrent* 1(3): 50 (1987), Apirana Taylor, *Landfall* 42: 334-6 (September 1988) and in the *School Library Review* 8(2): 28-29 (1988). Many of Hone Tuwhare's poems are also used in primary, secondary and tertiary education English programmes where they are seen as having cultural importance as indigenous poetry. The poems have social and political significance. Many are concerned with Tuwhare's experiences as a boilermaker and activist for union issues, and as a commentator on the Maori struggle for tino rangatiratanga. The poem *No Ordinary Sun* at p112 of this collection has been described as "the classic anti-nuclear poem" by Alyn Ware of the Disarmament and Security Centre.⁴ Tuwhare is included in Mark Willhardt and Alan Michael Parker (eds) *Who's Who in Twentieth-Century World Poetry*, (London and New York: Routledge, 2000). In 1999 he was the Te Mata Poet Laureate, and in 2003 was awarded one of the inaugural Prime Minister's Awards for Literary Achievement. Tuwhare's poems continue to be published and to receive favourable reviews. On the basis of the poems that were selected for

⁴ <http://www.disarmsecure.org/publications/papers/lobbying.html> (accessed 12 May 2005).

inclusion in Albert Wendt, Reina Whaitiri & Robert Sullivan, (Eds.), *Whetu Moana: Contemporary Polynesian Poems in English* (Auckland: Auckland University Press, 2003), Tuwhare was described as “deliciously relaxed in his own body, earthly metaphysical (well, that's not new) and outrageously code-switching” by Terry Locke of Waikato University.⁵ *Mihi: Collected Poems* stands as a major part of Tuwhare’s work containing a themed selection of his best and most influential poems.

Hone Tuwhare is an internationally respected poet. In New Zealand, his works are used at weddings, tangi and funerals. They also provide connections to other figures in literary, artistic and political worlds such as artist Ralph Hotere who has used excerpts from Tuwhare's poems in his paintings.

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’s sexual imagery suggests that it is intended largely for the adult reader. While some poems such as *Rain* are accessible to children and are used in classroom programmes, other poems are of a complexity and density which would make them indigestible for younger readers. These poems need high engagement with text and assume a background and life experience from the reader. The publication is of high interest to Maori and those with an interest in poetry.

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

This book is intended for readers who are interested in poetry. It is also intended as a significant collection of the poet's oeuvre, pulling together works from various times and sources. It also has educational purpose in that poems from the collection are used in primary, secondary and tertiary education.

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

As a significant work, the publication will have been in the collection of most public libraries, secondary school libraries, and tertiary institution libraries for over twenty-five years.

3A Publication may be age-restricted if it contains highly offensive language likely to cause serious harm

3A(1) A publication to which subsection (2) applies may be classified as a restricted publication under section 23(2)(c)(i).

3A(2) *This subsection applies to a publication that 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.*

3A(3) *In this section, **highly offensive language** means language that is highly offensive to the public in general.*

⁵ <http://www.soe.waikato.ac.nz/hyperpoet/Genres/LockeReviews/WhetuMoana.html> (accessed on 12 May 2005).

The publication contains some offensive language. In each case the words or phrase used are concomitant with the tone and flavour of the poem. For example, in *Sandra* (p21/22) which is written for her thirteenth birthday, the poet self-deprecatingly refers to "the bullshit and jazz / which sometimes go with the poetry / I write..." He does not want to send "...a kumara or / book – which seems ordinary..." and is aware of her disapproval of his work, but he is writing this poem for her, about his recollections of being fourteen. This leads to a memory of his pocket lining breaking and his treasured marbles spilling over the school floor "gimme back me fuckin' marbles / youse kids..." The use of the vernacular of the playground sits comfortably in the reminiscence and also denotes the desperation of a boy protecting his property.

On page 82 in the poem *Tangi-hanga*, the poet is racked by grief at Matiu's tangi and angered over the wrangling by one side of the family who claim priority over the tupapaku (body) to bury it in northern tribal grounds. Tuwhare first gently addresses Matiu and then remonstrates with those who have asserted this traditional right:

A turd upon you all. On your collective ignorance
may the cunt of Hine-nui-te-po
squint a baleful eyeball before pissing

The extent of his anger is made clear by the imagery of excrement, and as he invokes the death goddess to punish them. This metaphor refers to the legendary Maui's death which came about because he tried to conquer Hine-nui-te-po by entering her womb as she slept. The fantail laughed and woke the goddess who clenched her thighs and strangled Maui. Tuwhare's rage is delivered strongly through the use of this legend and the employment of an offensive (and seldom used) word adds disgust and venom to the image. The final verse of this poem takes the poet's fury to an area where he laments the value placed on the body rather than the memory of the much loved man. The context of this poem is vital in coming to a full understanding of the why the offensive language is used and when the full strength and scope of the emotions are taken into account, the words fit comfortably into the span. The publication uses offensive language to a low extent and moderate degree and is not likely to cause harm.

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".

The Classification Office has taken into account the New Zealand Bill of Rights Act 1990 when making this decision. While it is acknowledged that some people may be offended by reading parts of this book, the NZBR Act states that everyone has 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. Any restriction the availability of this publication would not be a reasonable limitation nor demonstrably justified in a free and democratic society because of its status as a significant, well-reviewed example of the work of an internationally respected New Zealander.

Conclusion:

The book *Mihi: Collected Poems* is classified as unrestricted. *Mihi: Collected Poems* is a 174 page book of Hone Tuwhare's poems. The collection is acknowledged as classic of New Zealand literature, written by an internationally respected poet. The works convey the passion the author has for his world. They demonstrate his distinct and effortless humour which is clever both in its simplicity and in its capture of the bawdiness in the vernacular of the working man. The context of the poetry and the clarity of the poet's tone and passion mitigate the effects of the sexual references and imagery and the limited use of some offensive language.

The book's unrestricted availability is unlikely to injure the public good. The book is intended for a mature audience. A reader with the maturity to read the poems is likely to have the maturity to deal with their contents. Readers must also make a conscious decision to engage with the book and the usual browsing behaviours will influence their choice to continue to a more comprehensive level. Unlike a film, a book of poetry does not make a sudden and colourful impression on naive viewers. This book requires a level of engagement with the text that would make it of little interest to children.

The publication has been freely available in New Zealand for many years, and the Classification Office is not aware of any evidence of injury to the public good arising from that availability.

An unrestricted classification places no limits on the freedom of expression.

The Classification Office classifies *Mihi: Collected Poems* as:

Unrestricted

Date: 11 May 2005

For the Classification Office (signed):

OFLC No: 500373



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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