

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Auckland Council

Title of publication:	Into The River
Other known title:	Not stated
OFLC ref:	1500261.000
Medium:	Book
Author:	Ted Dawe
Publisher:	Mangakino University Press
Country of origin:	New Zealand
Language:	English, Māori
Classification:	Unrestricted.
Excisions:	None
Descriptive Note:	None
Display conditions:	None

REASONS FOR THE DECISION

The Office of Film and Literature Classification (Classification Office) examined the publication and recorded the contents in an examination transcript. A written consideration of the legal criteria was undertaken. This document provides the reasons for the decision.

Submission procedure:

Section 42(1) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act) states any person may, with the leave of the Chief Censor, submit any publication to the Classification Office for reconsideration of the last decision of the Classification Office or the Film and

Literature Board of Review (the Board) in respect of that publication if not less than 3 years have elapsed since that decision was entered in the register in accordance with section 39.

Alternatively, under s42(3) of the FVPC Act, any person may, with the leave of the Chief Censor, submit any publication to the Classification Office for reconsideration of any decision made in respect of it within the period referred to in those subsections if the Chief Censor is satisfied that there are special circumstances justifying reconsideration of the decision. The Classification Office may alter or confirm the previous decision.

On 25 March 2015, the General Manager, Libraries and Information, Auckland Council, on behalf of Auckland Libraries, sought leave to submit this publication for reconsideration of the Board's classification under s42(3) of the FVPC Act.

The Chief Censor granted leave for reconsideration of the classification on 01 April 2015. The reasons for granting leave were as follows:

Since this publication was classified R14 in January 2014 a number of factors have come to light which taken together amount to special circumstances justifying the reconsideration of the classification of the publication under s.42 of the Films, Videos, and Publications Classification Act 1993. The factors include the range of views expressed by the Film and Literature Board of Review, the capacity of public libraries to mitigate the injury to the public good which might but for the restriction flow from unrestricted access to the book, the shared view of libraries across New Zealand, in particular the 63 public libraries run by local government authorities, the impact that the restriction has had on the value of the book as a teaching resource, and the significance of the book as an aid to countering issues in New Zealand about bullying.

The Classification Office originally classified the publication as Unrestricted: Suitable for mature audiences 16 years of age and over (OFLC ref: 1300727.000; decision registered 11 September 2013). Family First New Zealand (Family First) appealed the decision to the Board. The Board classified the publication Objectionable except if the publication is restricted to persons who have attained the age of 14 years. This is the current classification for the publication.

Family First was notified of the submission of the publication for reconsideration. As persons with an interest in the publication they were informed of their right to make a written submission on the classification.

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 written submission(s):

In their application for leave to submit the publication for reconsideration of its classification, Auckland Libraries included the following reasons:

Public libraries across New Zealand from 64 local authorities representing approximately 308 library service points all support the removal of the restriction...

...difficult issues such as bullying and racism should be topics that young people can read about and discuss in safe settings such as schools to make sense of their experiences, and so they do not feel they are the only one.

All citizens including young people should have access to information and literature which helps them understand the complex world they live in.

Libraries, schools and caregivers can curate collections so that materials reach appropriate audiences, without cumbersome restrictions that effectively remove resources from everyone...

Managing the restriction has impeded access to those over 14 years old and unfairly affected the exposure of a quality (award winning) novel written for an audience (young men) who need encouragement to read.

They also provided the following information:

Public and school libraries including Auckland Libraries had large numbers of copies already in circulation when the second classification was applied, and had to retrospectively change their processes and access provisions for the copies they held. In the case of Auckland Libraries, this meant removing all 42 copies of *Into the River* from open shelf collections across 54 libraries, transferring them into a closed access collection at the Central City Library, acquiring and applying the appropriate labels on the books and adding notes on the library catalogue. Customers must now request the item using our on-line request process, and show proof of age if appropriate before being allowed to borrow the title. Consequently Auckland Libraries experienced a massive drop in issues for the title as the target audience (teenage boys) did not come across the title in their browsing.

In support of this application, the Library and Information Association of New Zealand (LIANZA) stated they believed the restriction “would potentially do more harm than good” for the following reasons:

Public and school libraries are already well placed to be able to ensure that the publication only reaches appropriate audiences through the use of professional curation...

...denying young people insights on issues such as bullying and racism would do more harm than good and could even contribute to the longer term perpetuation of both issues.

Given the length of the publication (208 pages), LIANZA argues that a high degree of self-selection is also applicable. Books of this length typically require a high degree of maturity and skill to read.

Few young people aged 14 or over carry suitable identification. This in turn means the only way for library staff to effectively ensure that they adhere to the classification is to refuse to issue the book to anyone without suitable ID, in effect denying many of those with legal access to the publication.

...there is also the matter of consistency. Ted Dawes previous novel, “Thunder Road” which contains similar themes (and language) is aimed at the same audience. Where *Into the River* is censored, *Thunder Road* is already being widely used as a teaching resource in many secondary school English classes throughout New Zealand.

Family First, as an interested party, submitted a request that the publication be given an “R18 rating with shrink-wrap” for dealing with “...graphic sexual content and paedophilia. Explicit descriptions of drug taking glorify the abuse of drugs, and there is misuse of power and sinister manipulation of 14 year olds.”

Under s21 of the FVPC Act, the Classification Office requested that a number of parties provide information and feedback to assist with the classification process.¹

Bernard Beckett (secondary school teacher, author of young adult fiction, and chief judge for the NZ Post Book Awards the year that *Into The River* won Book of the Year) was approached by the New Zealand Book Council, and provided the following comments:

...this is an important and in many ways unique book. It's the key reason why I've been such a champion of the title. This is a tale that's not often told enough in our schools, yet even a cursory glance at achievement rates for our young Maori men shows how important it is that their stories be told, and this broader issue of cultural disconnection be told in such an authentic manner. It speaks to the state of our society that this aspect of the book was largely overlooked in our glamour to excite ourselves over cussing and ejaculation. Surely we are better than this. Clearly you have the responsibility to weight up the interests of the various groups, but do remember the group that has potentially the most to gain for this sort of literature is also the group that will not be represented during any such negotiation. Their invisibility is the larger problem this book addresses.

Regarding the availability of similar material in the young adult fiction genre:

If our fixation is to be the violence, language and sexual content, then yes, there is an awful lot of such material out in the YA field. Indeed, it is rare to attend a book festival without there being some discussion of what does or does not constitute appropriate material in the YA market. My own books frequently include sexual material (how could any discussion of adolescence do otherwise and still remain believable?) *Home Boys*, which I know is taught at Year 10 in some schools, includes a boy showing his friend how he masturbates, and ends with an explicit sex scene... Thinking back to the classics school texts, *Catcher in the Rye* started it all, with the disaffected Holden hiring a prostitute and talking up his sexual prowess. *A Clockwork Orange* is as brutal as they come, and is frequently taught in senior school. It is very difficult not to see *Into the River* as having had an entirely different standard applied to it, which strikes me as a worrisome outcome.

Regarding the potential for the book to shock and disturb readers under the age of 14 years old:

I rather hope it will shock and disturb all its readers, in the following way: I hope they will read this book and feel moved and unsettled by the society we have built, and the institutional racism that makes it so very hard to inch forward as a bicultural society. But it's the sort of shock I'd like us to tolerate. There are higher values than sedated comfort. I am certain the sexual content and language will shock no teenagers. Compared to the casual conversation of the playground, which I observe on a daily basis, this is tame, and much more importantly, contextualised.

Sue Esterman (library manager at a Wellington secondary school) was also approached by the New Zealand Book Council, provided the following comments regarding the availability of similar material in the young adult fiction genre:

¹ These parties were the NZ Association for the Teaching of English, School Library Association of New Zealand, The Children's Bookshop, PPTA, New Zealand Book Council, Bay of Plenty Children's Literature Association, Storylines.

There are many other books with similar content available. For example, *Bugs* (author escapes me!) came out last year and was nominated for the Book Awards. It deals with dysfunctional families, bad relationships, poor choices and all. A great deal of recent literature for young people contains sex, foul language and controversial behaviour - but that's often where our teenagers are at. And such books are available if not in school libraries then certainly in public libraries and as e-books.

Regarding the potential for the book to shock and disturb readers under the age of 14 years old:

Some kids would be shocked, I am sure, but I also think that responsible librarians and teachers might steer those kids away from choosing a book like this if they were concerned about it. I know I would, by offering alternatives or advising that the content is disturbing. But my basic viewpoint is that kids should be able to choose their own reading; guidance rather than censorship is preferable but of course not always possible!

The Management Committee of Storylines Children's Literature Trust New Zealand provided the following comments regarding the availability of similar material in the young adult fiction genre:

We consider that *Into the River* is not unusual or unique in contemporary young adult literature; we could name a good number of award-winning YA books by respected New Zealand and overseas authors which fit into this genre of 'disaffected and rebellious teenage male grappling with authority', dealing with similar issues (drugs, alcohol, sex, bullying, racism and alienation) and using similar offensive language. Such books, usually critiqued by adults as being 'gritty', 'hard-hitting', 'thought-provoking' or 'powerful', are generally available, both in shops and libraries... novels formally described as YA are routinely read by intermediate school age children of 11 and up.

Regarding the potential for the book to shock and disturb readers under the age of 14 years old:

We are reluctant to categorise all or even most children under 14 as being likely to be shocked or disturbed, as the range of children's responses is infinite according to their background, experience and maturity. What may shock or disturb one might be seen merely as 'a good story' by another. There is also a time factor: the world-view and implicit messages of any given story, even though disturbing, may be quickly forgotten or completely change a child's view of the world in positive ways. We also question whether it should be seen as entirely a 'bad thing' for a child to be disturbed by the stories they read; is this not one of the functions of literature, to open doors onto different worlds, to provoke, to put different points of view?

The following comments were also provided by members of the New Zealand Association for the Teaching of English:

Yes, it does have some confronting content but this is not a dominant feature of the book... there are many, many books that are available without restriction that have a similar, or more extreme, content. The overall ideas and teenage concerns that the book addresses are relevant to teen readers.

In my view, the present ruling is sufficient; to impose a harsher rating would be an unfair and unbalanced response to a single advocacy group. The book gained an undue amount of attention over the 'unsuitable' elements because of its success in the Book Awards. Had it been less successful, I believe the content would not be being debated.

The content would make me wary of teaching it to students under 16 but that doesn't mean it needs to have an age restriction. I have recommended it to students and a number of Year 10 boys bought it and read it without any concerns being raised.

And:

I think it would target probably 13-17 year olds (i.e. Secondary School aged students). I would not however be comfortable giving it to a student under the age of 16 years.... Overall, I found the book interesting and engaging. I am, however an adult reader. I would not be comfortable about my 15 year old son reading it and I would not give it to students.

Description of the publication:

Into The River is a soft paperback book measuring 120 x 200 mm and 280 pages long including covers. An excerpt from the description in the original Classification Office decision (OFLC ref: 1300727.000) is provided below:

The novel is centred on Te Arepa Santos, a boy from a fictional village on the East Coast of the North Island in New Zealand/Aotearoa. He lives with Ra, his koro or grandfather, and enjoys rural freedom with his friend, Wiremu. Te Arepa's mother is in hospital with tuberculosis; his father is a shadowy figure in the past. His Ngati Porou tribal connections and Pakeha ancestry include a Spanish explorer called Diego Santos. Knowing that Te Arepa is clever, Ra and other tribal leaders have clear aspirations for him and he wins a scholarship to a boys' boarding school in Auckland. The transition is difficult. He forges friendships, finds enemies, and discovers that his Maori identity is discounted and a disadvantage. He endures the bullying that comes from this, as well as that meted out to new boys, and sees what happens when that bullying goes too far. In the tradition of the school, the boys give him a nickname and he becomes 'Devon' after the ship in which his Spanish ancestor travelled. At school, Te Arepa grapples with serious competition, hard work and success. Holidays and term breaks are also full of learning. His friends' families provide stark and often uncomfortable contrasts to his East Coast roots and the sound values he has been imbued with by Ra. Along the way, there are confusing encounters with sex and a growing understanding of intimacy, the use of drugs, peer pressure, deep racism, grief and death. Friendships are deepened and finally Te Arepa's loyalty is tested to the utmost and his future is uncertain.

The publication was re-examined in its entirety. There has been no change to the publication since it was first examined by the Classification Office.

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 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 any s3(1) matters in such a manner that the availability of the publication is likely to be injurious to the public good.

The publication deals with matters of sex, crime, cruelty and violence and this was discussed in the previous of the Classification Office.

Matters of concern to ss3(2), 3(3), 3A, 3B and 3(4) of the FVPC Act were also discussed in the Classification Office's previous decision.

Re-examination does not reveal any matter that requires further consideration under ss3(1), 3(2), 3(3), 3A, 3B or 3(4) of the FVPC Act.

For example, the Classification Office was criticised by Family First for incorrectly identifying the extent to which highly offensive language featured in the publication (s3A of the FVPC Act). Upon reconsideration, it was determined that the higher extent of highly offensive language did not measurably alter the conclusion about the impact of highly offensive language had on the publication when first classified.

Conclusion:

The right to freedom of expression is a right enjoyed by all New Zealanders, as articulated in the New Zealand Bill of Rights Act 1990 (NZBORA). The application of the FVPC Act must be consistent with the NZBORA. When the FVPC Act is applied, a publication may be classified in such a way that restricts the availability of the publication; this is a limit on the right to freedom of expression. To be rights-consistent, any limitation on the right to freedom of expression must be reasonable and demonstrably justifiable, in accordance with s5 of the NZBORA.

In the Classification Office's previous decision the right to freedom of expression was considered when applying the FVPC Act. Further considerations included:

...the book is intended for a more mature audience. There are many other novels widely available without restriction in New Zealand with similar sexual descriptions of an equivalent nature, many of them literary classics and coming of age novels, or popular fiction phenomena in their own right. This would make a restriction on *Into The River* arbitrary and unfair. It would create a widespread inconsistency in conditions of access to books of this nature. It would not be reasonable or "demonstrably justified" on the basis of content in this book. Concerns about children or young persons are adequately addressed by a classification indicating the book's suitability for mature audiences and a label that indicates sexual content. This has already been addressed by some booksellers, which indicates a reasonable and conscious responsibility taken by marketers to warn parents and caregivers and thus provide protection for children and young people.

The book was originally classified Unrestricted: Suitable for mature audiences 16 years of age and over. This classification did not interfere with the right to freedom of expression.

The Board reviewed the classification and classified the publication 'Objectionable except if the publication is restricted to persons who have attained the age of 14 years'.

The Board's majority decision includes the following:

Overall, when considering the section 3(1) test in light of section 3(3) and 3(4), the Board considers that although this book does describe, depict or otherwise deal with matters such as sex, crime, cruelty and violence it does not do so in such a manner that the availability of the publication is likely to be injurious to the public good. Subject to the age limitation referred to below, the Board considers the book is likely to educate and inform young adults about the potentially negative consequences that can follow from involvement in casual sex, underage drinking, drug taking, crime, violence and bullying. The Board considers that the book serves a useful social purpose in raising these issues for thought and debate and creating a context which

may help young adults think more deeply about the immediate and long term consequences of choices they may be called upon to make.

However, there are scenes in the book that are powerful and disturbing, and in the opinion of the Board run a real risk of shocking and disturbing young readers. Whilst those aged 14 and above are likely to have a level of maturity that enables them to deal with this, those below the age of 14 may not. Accordingly, the Board considers the publication should be age restricted to those who have attained the age of 14 years.

At no point in the Board's decision (or in the dissenting opinion of minority view) is the right to freedom of expression referred to. It is thus entirely unclear, on the text of their decision, whether the right to freedom of expression was considered by the Board when applying the FVPC Act. This is in contradiction to their obligations under the NZBORA and the direction of the court in *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9, which required that the Bill of Rights "must be given full weight in the construction of the Act, and in any classification made thereunder."² If the right to freedom of expression has not been considered in coming to the classification decision, it is an error of law.

Plain evidence or proof is not required when providing reasons,³ and classification decisions are a matter of expert judgment by virtue of s 4(1) of the FVPC Act. However, in coming to their conclusion that the publication should be restricted by exercise of s3B of the FVPC Act, the Board does not specify which scenes in the book "are powerful or disturbing" so as to justify the restriction. They identify that those aged 14 years and older have the maturity that enables them to deal with these unspecified scenes, but they do not expand on this point. The Board does not provide reasons why those under the age of 14 years do not have the maturity necessary or will not be able to deal with the unspecified scenes in question. Thus it is not clear whether the restriction is rationally connected to its purpose, or whether restricting the book from those under the age of 14 years old will prevent harm to those under the age of 14 years old. In the words of the Board, the book serves a "useful social purpose" and there is no reason to suggest that useful social purpose cannot extend to those under the age of 14 years old. As highlighted in comments received during the consultation process:

... it's the sort of shock I'd like us to tolerate. There are higher values than sedated comfort. I am certain the sexual content and language will shock no teenagers. Compared to the casual conversation of the playground, which I observe on a daily basis, this is tame, and much more importantly, contextualised.

And:

We also question whether it should be seen as entirely a 'bad thing' for a child to be disturbed by the stories they read; is this not one of the functions of literature, to open doors onto different worlds, to provoke, to put different points of view?

Many young New Zealanders will experience abuse, bullying, and be confronted with sex, crime and drug use in their lifetime, and some at very early ages. Stating young readers may be shocked and disturbed by the scenes of this book suggests to those young readers who have had similar experiences and/or see their worldview reflected back at them in the text, that their experiences and worldviews are inherently shocking and disturbing. And for those young people who have the privilege of never having come into contact with the issues dealt with by the book, to restrict

² *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at [16].

³ *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at [34] and *Moonen v Film and Literature Board of Review* [2002] 2 NZLR 754 at [25].

the book from them would be to shut down the dialogue between them and their peers about real and present phenomenon experienced by many young New Zealanders. To restrict this book, which provides a safe and well-contextualised space to explore these issues, restricts yet another (beneficial rather than harmful) resource from young persons and (as suggested by LIANZA) “could even contribute to the longer term perpetuation” of more harmful attitudes and behaviours.

Further, it is not clear whether the restriction limits the right to freedom no more than is reasonably necessary. The restriction has had an impact on, not just the availability of the publication for those under the age of 14 years but the general availability of the publication to the public. As evidenced by Auckland Libraries:

[there has been] a massive drop in issues for the title as the target audience (teenage boys) did not come across the title in their browsing

And:

Managing the restriction has impeded access to those over 14 years old and unfairly affected the exposure of a quality (award winning) novel written for an audience (young men) who need encouragement to read.

The restriction has thus had the effect of restricting the right to freedom of expression more than is reasonably necessary, and this cannot be demonstrably justified.

Finally it is unclear if the restriction is in due proportion to its objective of preventing injury to the public good. As evidenced by the consultation process, there is a plethora of material readily available to those under the age of 14 years (and of the young adult fiction genre) dealing with similar or the same content as this publication. The harm of this material is prevented by “professional curation” and adult supervision not by government-mandated restriction. It is therefore unreasonable to say that the restriction is in due proportion to its objective. Instead the importance of restrictions issued by exercise of the FVPC Act is largely undermined by this stand-alone restriction.

The Classification Office considers that a restriction of this publication cannot sit comfortably with the right to freedom of expression. To the contrary a restriction would be inconsistent with the right to freedom of expression and is not reasonable or demonstrably justifiable. The Classification Office, upon reconsideration and in response to the matters addressed above, classifies the publication unrestricted. This classification reflects the circumstances put to the Classification Office during consultation. In this instance, the suitability of the publication for young persons can best be determined by libraries, schools and parents.

Date: 14 August 2015

For the Classification Office (signed):

Note:

You may apply to have this publication reviewed under s47 of the FVPC Act if you are dissatisfied with the Classification Office's decision.

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