



UNDER

The Films, Videos, and Publications
Classification Act 1993 (FVPC Act)

IN THE MATTER OF

The Great Replacement

SUBMISSIONS OF THE OFFICE OF FILM & LITERATURE CLASSIFICATION
(CLASSIFICATION OFFICE)

Preamble

This submission is made by the Classification Office under s 47 in response to the application and submissions to the Board of Review (the Board) made by The Kiwi Party (the Applicant).

The Great Replacement was classified objectionable under s 3(3)(d) of the FVPC Act on 23 March 2019. It may be helpful to the Board of Review if the Classification Office directly addresses some of the points made by the Applicant in their submission to the Board dated 3 July 2019.

The Classification Office has considered the reasons advanced by the Applicant for a review of this decision. In brief, the Applicant considers “The nature of the right to free speech” at length, and endeavours to present *The Great Replacement* as an example of political free speech, contending that “[p]olitical free speech is an absolute right under the common law Constitution” [at Para 59]. This is misguided. The Board (and the Classification Office) is tasked with classifying publications under the legislation set out in the FVPC Act and must therefore pay extensive and careful regard, as a matter of law, to the right to freedom of expression as described in the NZ Bill of Rights Act 1990. Any other considerations proposed by the Applicant regarding the right to freedom of expression are not relevant to the matter before the Board.

Much of the Applicant’s submission is dedicated to procedural concerns that do not bear on the matter before the Board, which is the classification of the publication. However, the Classification Office has chosen to briefly address some of these misconceptions for clarity.

The Applicant considers [at Paras 39-46] that there may have been “Political interference” and extensively references emails related to an OIA request made by the Applicant. The Chief Censor exercised his statutory power to classify the publications independently. Consequently, there is no evidence of interference (political or otherwise) in any action by the Classification Office, including the Chief Censor’s decision to submit this publication under s 13(3). The Applicant suggests [at Para 45] that the Board should require the censor to make a sworn



deposition setting out whether or not he had any discussion in regard to the publication with any other persons prior to making his decision. While we cannot see that the Applicant has any good ground for suggesting the Board is obliged to take such a step, the Chief Censor will be happy to provide the Board with such a deposition, should the Board consider that to be helpful.

The Applicant also considers [at Paras 22-38] that the Chief Censor acted illegally in failing to carry out processes set out in ss 19 and 20 of the FVPC Act; specifically failing to notify Mr Brenton Tarrant (whom they state is the author at Para 34) and the public, and then failing to consider submissions from the public. The Chief Censor has discretion over the submissions process as set out in ss 19, 20 and 22 to ensure the work of the Classification Office can proceed in an effective and timely manner.

The Classification Office reiterates there was clear public interest in the legal status of the publication being clarified as soon as possible after the Christchurch mosque attacks, and the Chief Censor was within his rights to exercise his discretion. The Board, however, may wish to call for submissions.

The document does not credit its creator by name. The Classification Office acknowledges that the publication is undeniably associated with the Christchurch mosque attacks but whether or not Mr Tarrant (the alleged attacker) is responsible for this crime is yet to be determined in a court of law.

This submission will set out the reasoning for classifying *The Great Replacement* objectionable in accordance with the FVPC Act. The balance between the freedom of access of information and the protection of the public is always a critical consideration in cases such as this but the points made in this submission will set out the view of the Classification Office that an objectionable classification is a demonstrably justified limit on freedom of expression.

The relevant law

1. When classifying any publication, the Classification Office is required by s 23(2) of the FVPC Act to take into account the matters referred to in ss 3 to 3D. The relevant parts of ss 3 to 3D are set out below.
2. Section 3(1) of the FVPC Act 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.



3. The Court of Appeal's interpretation of this section, as set out in *Living Word Distributors v Human Rights Action Group (Wellington)*, must also be taken into account. The Court held that this section sets out a "subject matter gateway".¹
4. If a publication makes it through this "subject matter gateway", it is then necessary to consider whether the availability of the publication is likely to be injurious to the public good. Sections 3(2), 3(3) and 3(4) of the FVPC Act assist in the classification of such publications as objectionable or otherwise.
5. Section 3(2) deems a publication to be objectionable if it promotes or supports, or tends to promote or support, certain behaviours, including (at s 3(2)(f)), "acts of torture or the infliction of extreme violence of extreme cruelty."
6. In *Moonen v Film and Literature Board of Review (Moonen No 1)*, the Court of Appeal set out how a publication may come within a definition of "promotes or supports" in s 3(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 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.²

7. Section 3(3) states that in determining whether or not a publication (other than a publication that has been deemed objectionable under s 3(2)) should be classified as objectionable or as a restricted publication, particular weight shall be given to the extent and degree to which, and the manner in which, the publication does certain things, including (at s 3(3)(d)), "promotes or encourages criminal acts or acts of terrorism" and (at s 3(3)(e)), "represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic of members of that class, being a characteristic that is a prohibited ground of discrimination specified in section 21(1) of the Human Rights Act 1993³".
8. Section 3(4) requires that, in determining whether a publication (other than a publication that has been deemed objectionable under s 3(2)) should be classified objectionable or as a restricted publication, the following matters must also be considered:

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

² *Moonen v Film and Literature Board of Review* [1999] NZCA 329, [2000] 2 NZLR 9 [*Moonen No 1*] at [29]

³ The grounds of discrimination prohibited by s21(1) of the Human Rights Act 1993 are sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation.



- a) The dominant effect of the publication as a whole.
 - b) The impact of the medium in which the publication is presented.
 - c) The character of the publication, including any merit, value, or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific, or other matters.
 - d) The persons, classes of persons, or age groups of the persons to whom the publication is intended or likely to be made available.
 - e) The purpose for which the publication is intended to be used.
 - f) Any other relevant circumstances relating to the intended or likely use of the publication.
9. Section 4(1) of the FVPC Act provides that the question of whether or not a publication is objectionable or should be classified as a restricted publication is a matter for the expert judgment of the person or body authorised or required to determine it, and evidence as to, or proof of, any of the matters or particulars that the person or body is required to consider in determining that question is not essential to its determination. Section 4(2) provides that, without limiting subsection (1), where evidence as to, or proof of, any such matters or particulars is available to the body or person concerned, that body or person shall take that evidence of proof into consideration.
10. In *Moonen No 1* the Court of Appeal rejected a proposal that the Board (and the Classification Office) must be satisfied beyond reasonable doubt that a publication is objectionable before classifying it as such by referring to s 4:

There is no question of onus or standard of proof arising in the classification process, whether in terms of s 4 or otherwise. The question which the office or board has to determine can be characterised as one of assessment, judgment or opinion. It is not one of objective fact. Such a question arising in a classification context is not sensibly amenable to a standard or onus of proof. Indeed s 4 itself makes it plain that evidence or proof are not required. ... [I]n the classification exercise entrusted to the office and the board, those responsible make their assessment without reference to onus or standard of proof. They form their own opinion of the publication against the statutory criteria, and their own expertise. They must take into account any evidence tendered, but ultimately if they consider the



publication to be objectionable or otherwise, they make their classification accordingly.⁴

11. Section 14 of the New Zealand Bill of Rights Act 1990 (NZBORA) 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 s 5 of NZBORA, 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 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 publication

12. The Chief Censor called in the publication for classification on Sunday 17 March 2019 under s 13(3) of the FVPC Act. No submissions were sought in relation to the classification of the publication given the clear public interest in quickly clarifying the legal status of the publication following the Christchurch mosque attacks.
13. *The Great Replacement* (subtitle: *Towards a New Society / We March Ever Forwards*) is a 74-page text file purportedly written by the gunman who carried out the Christchurch mosque attacks on Friday 15 March 2019. These attacks resulted in the deaths of 51 innocent civilians and the serious injury of many others.

The publication appears to take its title from the 2012 book of the same name *Le Grand Remplacement* by French author Jean Renaud Camus, whose theories on Europe's white majority being replaced by non-white immigrants, are also repeated in the text. The front cover of the booklet features the sonnenrad or black sun, a pagan European symbol co-opted by the Nazis in the mid-1930s, and now closely aligned with neo-Nazi, neo-fascist, alt-right and white nationalist groups. On the cover of *The Great Replacement*, the sonnenrad is augmented with a series of illustrations radiating from the spokes of the runes to form a bigger circle.

Inside the front cover there is the text of Dylan Thomas' 1947 poem *Do not go gentle into that good night*. This is followed by a two page introduction to 'replacement theory', which revolves around falling 'European' birth rates and an increase in the immigration of non-Europeans, to 'European' lands. This is in turn followed by an 18 page, self-penned interview in the form of a Q&A section that purports to reveal the writer's motives, reasoning and ideology for undertaking a violent attack.

The next section (Section I) takes the form of addresses to various political, religious, and ethnic groups and comprises five pages of text, opening with a modified version of

⁴ *Moonen v Film and Literature Board of Review* [1999] NZCA 329, [2000] 2 NZLR 9 [*Moonen No 1*] at [33]



Rudyard Kipling's *The Beginnings*, where every use of 'English' is replaced with 'Saxon'. This modified version is known as 'The Wrath of the Awakened Saxon' amongst far-right groups.

Section II of the publication is titled 'General Thoughts and Potential Strategies' and opens with a quote from Sir Oswald Mosley, an English politician and the leader of the British Union of Fascists. At 43 pages, this section forms the crux of the writer's personal thoughts and ideological positions, while also providing a rallying cry to his intended audience.

The publication then jumps straight from Section II to Section IV in conclusion. It opens with the text of William Ernest Henley's poem *Invictus*, proceeds to a final justification and appeal by the writer, and ends with the rallying cry 'EUROPA RISES'. The back cover of the publication includes a montage of colour photographs depicting Caucasian men, women, children and soldiers and the sonnenrad superimposed over the junction of the images.

14. The Classification Office examined the publication as a PDF document printed on double-sided A4 pages. Although the document does not contain page numbers, the Classification Office will cite page numbers when it refers to the publication so that the Board may locate the references easily. The front cover is designated as Page 1 and the back cover Page 74 for the purposes of this submission.

Section 3(1) Matters such as crime, violence and cruelty

15. It is submitted that the matters under consideration with regards to s 3(1) are crime, violence and cruelty.
16. The publication presents the written justification for the Christchurch mosque attacks which involved the violent murder and serious injury of unarmed and peaceful members of the public – including children.
17. Other statements throughout the text express criminal intent and have the potential to incite readers who are vulnerable to, or already share, the ideology expressed in the publication to undertake acts of terrorism and criminal violence.
18. The publication therefore passes through the "subject matter gateway" and must be considered further.

Injurious to the public good – s 3(2)(f)

19. The only relevant consideration under s 3(2) is whether *The Great Replacement* promotes or supports, or tends to promote or support acts of torture or the infliction of extreme violence or extreme cruelty.



20. The text deals with the infliction of violence and cruelty. Immediately following the introduction is a section titled “Answering possible questions” (Pages 5-22) that presents a detailed justification for the writer’s intention to undertake a violent terrorist attack. This section is presented in a Q&A style and attempts to portray the writer’s violent choices as, not only reasonable, but necessary in the circumstances. While this part of the publication advocates violence and murder, it does not specify or direct the nature and degree of violence to be employed. The acts themselves are not the focus of the text. There are no detailed descriptions or depictions of acts of torture, extreme violence or cruelty; these aspects are dealt with in more general terms in the context of wider political and social action. Thus this content is more appropriately dealt with in s 3(3)(d) of the FVPC Act.
21. At several points in the text the writer presents his justification for killing children belonging to the ethnic and cultural groups whom he regards as presenting a risk to white Europeans. The deliberate killing of children is inherently cruel, yet the writer claims to take no pleasure in it and presents this crime as an unpleasant necessity. In the context of the publication, these references are inextricably linked to the wider promotion of crime and terrorism which is more appropriately dealt with under s 3(3)(d) below.
22. The publication is evidently intended to inspire and persuade readers who share the writer’s ideology to follow his example. Direct association with the Christchurch mosque attacks and the attacker gives the publication a high level of authority and persuasiveness over its intended audience. Full consideration of these contextual factors requires the application of both ss 3(3) and 3(4) of the FVPC Act and is not possible with the application of s 3(2) alone.

Injurious to the public good – matters to be given particular weight – ss 3(3)(d) and 3(3)(e)

23. The Classification Office considered all matters in s 3(3), and found the matters relevant to the publication are to be contained in ss 3(3)(d) and 3(3)(e).

Section 3(3)(d) – promotion of crime and terrorism

24. The publication sets out the writer’s stated purposes for undertaking the Christchurch mosque attacks and, in turn, is intended to contribute to those purposes. One such stated purpose is:

To incite violence, retaliation and further divide between the European people and the invaders currently occupying European soil. [Page 6]

The term ‘European’, in the context of the publication, implicitly refers to those of white, European descent – regardless of nationality. Similarly, in the context of the publication,



the term 'European soil', implicitly refers to any country or territory where significant numbers of people with white, European descent happen to be a majority (or were once a majority at some point in history). The writer appears to use the term 'invader' to refer to non-white immigrants of 'European' lands, and more specifically, at times, to Muslim immigrants given the historical references in the publication.

25. The writer presents an unambiguous call, not for political or social discourse, but for immediate violent action. He emphatically states:

THE BEST TIME FOR ATTACK WAS YESTERDAY, THE SECOND BEST TIME IS NOW [Page 57]

He also attempts to create a sense of urgency for his call to violence, with repeated references to the imminent replacement of European (white) culture which is a cornerstone of the 'replacement theory'.

26. The writer clearly discusses his rationale for the selection of particular terrorist targets. There is specific information on New Zealand targets - two of which were not, in the event, attacked on 15 March 2019. Identifying specific targets in New Zealand, given the promotional context of this publication, presents quite specific and significant risks of harm. The publication also identifies groups and individuals that should, in the view of the writer, be attacked or killed. In identifying these targets, the publication acts as a guide for those who may want to emulate and accomplish the writer's aspirations.
27. The publication contains a few brief references to types of explosives and the manner in which they may be used. While not overly detailed, the references provide enough detail for those who are motivated by the writer's message and who may well seek more complete information on the manufacture and use of such explosive devices.
28. The deliberate killing of children is mentioned several times throughout the publication. The writer represents this choice as not only reasonable in the circumstances, but part of the reader's duty. The references to child murder are repeated, unambiguous and highly promotional. For example:

Children of invaders do not stay children, they become adults and reproduce, creating more invaders to replace your people. [Page 22]

Any invader you kill, of any age, is one less enemy your children will have to face. Would you rather do the killing, or leave it to your children? Your grandchildren? [Page 22]

And in a subsequent section the writer states that:

A [sic] ounce of prevention is worth a pound of cure. Preventing these enemies from reaching adulthood and their full potential of effect is of the importance. [Page 53]



29. The writer grossly misrepresents the crime of killing of unarmed civilians as equivalent to the killing of armed “invaders”. He remonstrates about what are, in his distorted view, the unjust circumstances whereby the killing of 60 armed ‘invaders’ would result in a heroic reception, while killing 60 unarmed ‘invaders’ would result in incarceration and vilification. He presents the civilian ‘invader’ as an insidious and urgent threat to the ‘European’ way of life.

But here’s the real kicker, the unarmed invader is far more dangerous to our people than the armed invader. [Page 43]

And further, that:

Both would seek to destroy our nation, both would seek to displace and replace our people, both would seek to destroy our culture and nationhood. [Page 43]

30. The writer attempts to create a scriptural authority for his terrorist justification – making it appear to be part of some sort of ancient, historical religious struggle. There are references to Constantinople and the Hagia Sophia that seek to create the impression of an ancient and ongoing struggle between Christianity and Islam.⁵

This grandiose presentation of history as a clash of (particularly religious) ideologies is a well-established tactic adopted by other extremist publications – such as magazines produced by ISIL (*Dabiq*), the Taliban (*Ihyaeh Khilafat*), and al Qaeda (*Inspire*) – examples of which have been classified as objectionable by this Office.⁶ The publication presents a particular extremist ideology in a way that is intended to appeal to those who are searching for justification for acts of terrorism and murder by contextualising terrorist violence as part of a righteous, historic struggle.

31. The text includes messianic phrases that are intended to both portray the writer as a leader worthy of attracting a following, while at the same time holding out the prospect that those who are searching for meaning might themselves transform into heroic leaders. This illustrates another known tactic whereby extremist material attempts to strike a chord with those searching for meaning and purpose in their lives. For example:

Lead and your people will follow. Show the strength of your convictions, the truth of yours and the iron-hard strength of your will and they will follow. [Page 51]

YOU WAIT FOR A SIGNAL, WHILE YOUR PEOPLE WAIT FOR YOU [Page 51]

⁵ See *The Great Replacement* Pages 28 and 30.

⁶ See for example: OFLC Ref 1600417.000 *Dabiq: Issue 2 (1435 Ramadan).pdf*, OFLC Ref 1600417.001 *Ihyaeh Khilafat: December 2014 (Issue 2).pdf* and OFLC Ref 1600417.002 *Inspire: Issue 12 (Spring 2014).pdf*



32. The extent, and degree to which and the manner in which violence, cruelty, murder and terrorism are promoted as heroic and aspirational throughout the publication creates a high probability of significant injuries to the public good. In particular:
- Those who are susceptible to radicalisation may well be encouraged or emboldened given the promotional nature of the publication and the justifications presented for acts of terrorism. This creates a risk of emulation of this sort of attack (at worst) and (at least) a risk that dehumanising, racist and violent hatred will be further spread.
 - There are instructional elements to the publication that give potential attackers some basic guidance on how to select targets and choose the means to perpetrate mass murder
 - The continued sharing of the publication provides its creator with notoriety and recognition, thereby establishing him as an example for those who may also seek notoriety and recognition through violent action.
33. The Classification Office has chosen to define a terrorist act (terrorism) in accordance with the Terrorism Suppression Act 2002⁷. The unambiguous calls for violence and murder against civilians contained repeatedly in the publication undoubtedly meet the criteria for terrorism as defined by ss 5(2)(a), 5(3)(a) and 5(4) of the Act.
34. The Applicant asserts [at Paras 71 and 72] that the writer is presenting nothing more than a “revolutionary tract”. For example, the applicant considers that there is no apparent harm from “Exhorting readers to violence and murder by misrepresenting these actions [of the gunman] as part of a grand historical struggle” as this is “true for any revolutionary tract”. In fact, *The Great Replacement* is not just any ‘revolutionary tract’. It is a publication that is fundamentally linked to the country’s worst mass murder and the extremist ideology that it represents.
35. The Applicant misrepresents aspects of the publication as examples of political free speech worthy of protection. For example [at Paras 47-50], the Applicant misrepresents a quote from the publication as a political critique of the Labour party. In fact, the quote referenced by the Applicant appears on a page with the heading “No Profits for Anti-

⁷ <http://www.legislation.govt.nz/act/public/2002/0034/55.0/DLM151491.html>

Section 5(1) of the Terrorism Suppression Act 2002 states an act is a terrorist act if it falls within s 5(2); that is it is intended to cause, in any 1 or more countries, 1 or more of the outcomes specified in s 5(3), and is carried out for the purpose of advancing an ideological, political, or religious cause, and with the following intentions including (at s 5(2)(a)), “inducing terror in a civilian population”. The outcomes referred to includes (at s 5(3)(a)), “the death of, or other serious bodily injury to, 1 or more persons (other than a person carrying out the act)”. Section 5(4) adds that a [terrorist] act does not fall within subsection (2) if it occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.



Whites” and ends with the statement “KILL YOUR LOCAL ANTI-WHITE CEO”.⁸ There is no link whatsoever to the New Zealand Labour Party. Rather – this section of the document is fully consistent with the dominant effect of the publication that is discussed further under s 3(4) below.

36. The creation of a ‘manifesto’ is becoming a ‘calling card’ of white supremacists/nationalists that carry out acts of terrorism and mass murder.⁹ The purpose of such publications is to create notoriety for the writer and their actions, and to inspire others by acting as an ideological reference, and in some cases an instructional manual.

37. An example of real world violence apparently directly inspired by this particular publication is set out in paragraph 50 of our submission.

Section 3(3)(e) – racial discrimination

38. The writer presents any group of people who are not white and European (presumably referring to people of Caucasian descent) but who are resident in a territory or country where there are a large number of white European (Caucasian) residents as an “invader”. The ‘invaders’ are portrayed as a direct threat to white Europeans. The document contains the stated justification for crimes of murder, mass murder and terrorism against ‘invaders’ both generally and with reference to particular targets.

39. The writer openly declares his racism in the soliloquised Q&A section. There are representations of popular white supremacist/nationalist cultural touchstones throughout the publication. For example, the slogan:

We must ensure the existence of our people, and a future for white children [Page 7]

This popular slogan is used by racial extremists and the far right. It has also appeared in the ‘manifestos’ of other killers both before and after committing violence, including the mass murderer Dylann Roof¹⁰, who is also referenced in *The Great Replacement*.

40. Despite the clear racist basis for the publication, it does not categorically contend that other races are inferior to white Europeans. In fact, the document contains grudging admiration of non-white races. Stated racial characteristics such as higher fertility, greater social cohesion and greater religious devotion are used to support the central notion that non-white races form a clear and present threat to white Europeans.

⁸ See *The Great Replacement* Page 48.

⁹ <https://www.theatlantic.com/ideas/archive/2019/02/christopher-hasson-was-inspired-breivik-manifesto/583567/>

¹⁰ Dylann Roof was convicted of killing nine people during the Charleston church shooting on 17 June 2015 in the U.S. state of South Carolina.



Therefore, the publication cannot fairly be said to promote or support the notion that any racial or ethnic group is inferior.

Additional matters to be considered – s 3(4)

41. In determining whether the publication is considered objectionable under s 3(3) of the FVPC Act, the Classification Office is also required to take into consideration the additional matters set out in s 3(4)(a) – (f) in relation to the publication.

The dominant effect of the publication as a whole

42. The dominant effect of *The Great Replacement* is a lengthy, amateur, somewhat contradictory document that sets out the writer's justification for violent, terrorist action whilst encouraging others to undertake similar attacks. The content and context of the publication sets it apart from most similar material: it is intrinsically linked to the worst terrorist atrocity in modern New Zealand history, and attempts to defend it; it was distributed online minutes before the attack to achieve maximum exposure and notoriety; and it was distributed alongside livestream footage of the attacks which glorified and promoted terrorism and acts of extreme violence and cruelty.

43. With respect to the 'dominant effect' of a publication, the High Court has stated:

When speaking ... of the dominant effect of material, Parliament is clearly speaking of the effect of the material on the minds of those persons to whom it was intended, or into whose hands it is likely to go. There is a material distinction between the dominant effect of the material and its content. Effect looks at the effect on the mind of the reader. Content looks of course to what the material in question contains or portrays.¹¹

44. With regards to effect, there is an important distinction between offensive and discriminatory language (sometimes referred to as 'hate speech') and language or rhetoric that is likely to promote acts of violence and terrorism (considered 'dangerous speech'). In relation to this, we consider it important that the Board and Classification Office can refer to current and relevant theory and research – whether local or international – in assessing the likely effect of a publication on its intended audience.

Susan Benesch has developed helpful guidelines¹² for identifying 'dangerous speech' that include:

¹¹ *The Society for the Promotion of Community Standards Inc v Waverley and National (1988) Ltd* [1993] 2 NZLR 709 at [718]

¹² <https://dangerousspeech.org/guide/>

Susan Benesch is a Faculty Associate at the Berkman Klein Center for Internet and Society at Harvard University.



- A speaker with the status and genuine influence over his or her intended audience;
- An audience that's particularly susceptible to messages that promote violence;
- A social or historical context in which certain groups are primed for violence;
- A medium or way of disseminating a message that has broad reach and influence amongst the intended audience (for example, wide distribution to an established online community); and
- A message that characterises an identified group of people as dehumanised and threatening, necessitating the use of violence as a form of 'self-defence'.

The content (as a whole) and context of this publication fits all of these criteria and can fairly be characterised as posing a genuine and identifiable danger to New Zealand society. These criteria are also applicable to the Islamic extremist material the Classification Office referenced earlier in this submission.

45. There are deliberate attempts in the text to obfuscate the intention of the publication and divert debate, thus making it difficult for those who are not part of the writer's internet sub-culture to accurately contextualise the document. The document is specifically targeted at people who are already susceptible to its messages through the use of ironic statements, internet memes, in-jokes and 'shitposting'¹³ that create a sense of community amongst those who share white supremacist/nationalist views.

For example, during his soliloquised self-questioning the writer, in response to an imagined insult, includes what appears at first glance to be a violent diatribe, but is actually another internet meme. The diatribe is a version of the Navy Seal Copypasta¹⁴ (also known as the 'Marine Copypasta'). It is an intentionally 'over-the top in-joke' that has been reproduced innumerable times over recent years and referenced in a number of viral messages and posts. This is calculated to appeal to the intended audience who are open and susceptible to the writer's messages, while diverting the unsavvy and uninitiated into a meaningless discussion of the writer's apparent violent response to an imagined accusation.

The writer also includes a sarcastic reference to the influence of video games and entertainment, referencing a popular topic of heated online debate (particularly in the United States). The video game references¹⁵ can draw the uninitiated down a path of heated online debate and away from the wider purpose of the publication, while also appealing directly to a disaffected audience, who, at their extremes, are already predisposed to the writer's messages.

¹³ 'Shitposting' is a term of internet slang describing a range of user misbehaviours and rhetoric on forums and message boards that are intended to derail a conversation off-topic and/or render a particular site or discussion thread unusable.

¹⁴ See *The Great Replacement* Page 20. <https://www.dictionary.com/e/memes/navy-seal-copypasta/>

¹⁵ See *The Great Replacement* Page 17. The writer references the popular games, *Sypro the Dragon* and *Fortnite*.



These references allow readers who are ingrained in the white supremacist/nationalist internet sub-culture to recognise that the writer is one of them, and so his calls for violent action are more likely to be persuasive to them.

46. *The Great Replacement* is inexorably linked with the worst act of mass murder in the history of New Zealand to date giving the publication authenticity, influence and cachet among readers who share the writer's ideology.

The persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available,

and the purpose for which the publication is intended to be used.

47. The publication was widely distributed to members of the New Zealand public in the hours after the attacks through various online platforms. However, it contains references indicating an intended appeal to particular groups of internet 'insiders' – especially those who share the writer's racist, extremist ideology. It appears to have been created with the intent that it would be shared widely in a similar manner to the online 'manifestos' of other white supremacist/nationalist terrorists. The writer makes references to similar documents produced by other terrorists¹⁶ he admires.
48. The choice of online dispersal methods for the publication – including the particular online forums where links to the publication were posted – appear to have been intended to ensure the widest possible dispersal and the greatest likelihood of receipt by a small number of people with the will and ability to act on its terrorist message.
49. The publication is evidently intended to inspire and persuade like-minded people to believe that individual violent acts of terrorism are justified and easy to carry out. It seeks to achieve this by providing justification for violent, terrorist attacks of the kind that occurred in Christchurch, and by being an inspirational manual.
50. A fatal attack at a synagogue in Poway, California on 27 April 2019 is reported to have been directly inspired by the Christchurch mosque attacks.¹⁷ The alleged synagogue attacker is also reported to have produced a 'manifesto' document in the same vein as *The Great Replacement*.¹⁸ That document repeatedly cites the reported writer of *The Great Replacement* as a highly inspirational figure who motivated him to carry out the

¹⁶ See *The Great Replacement* Page 18. The writer references by name the following individuals who also produced manifestos in relation to terrorist attacks; Dylan Roof – see footnote 8, and Anders Breivik – a Norwegian convicted of killing 77 people in attacks that took place in Oslo and Utøya.

¹⁷ <https://abcnews.go.com/US/suspect-deadly-san-diego-synagogue-shooting-linked-mosque/story?id=62685051>

¹⁸ <https://www.newyorker.com/news/news-desk/the-poway-synagogue-shooting-follows-an-unsettling-new-script>



attack at the synagogue and an earlier arson attack on a mosque. The evidence available suggests that this is a tragic example of the injury to the public good that the Classification Office's decision is intended to prevent.

The impact of the medium in which the publication is presented

51. The publication is a lengthy text document that demands a level of engagement and effort from the reader that can create a certain distance from the subject matter. However, engagement and effort can also work to enhance the uptake of the publication's message by creating a level of investment by the reader.
52. The publication was uploaded to the internet in various electronic forms, including PDFs, in an easily downloadable format, and is intended to be shared online and disseminated as widely as possible.

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.

53. The publication contains the stated justification for the Christchurch mosque attacks. It forms part of the context of the attacks and provides some information in relation to them. Accordingly, it could be of value to academic researchers and analysts as well as reporters seeking to inform the public.
54. The publication, however, has not been constructed in a way that provides a useful reference for ordinary New Zealanders seeking to understand the circumstances of the attacks. As noted in the discussion of 'dominant effect' the publication contains numerous attempts to actively divert and mislead casual readers while appealing directly to the writer's intended audience of susceptible sympathisers.
55. Furthermore, as noted in the discussion of s 3(3) of the FVPC Act, the publication creates a number of injuries to the public good – particularly with respect to young people and adults who are vulnerable to its extremist message and, in turn, to those who might be harmed by them.

Any other relevant circumstances relating to the intended or likely use of the publication

56. There has been a vast amount of media and official comment on the publication and the Christchurch mosque attacks but the Classification Office has sought to focus on factors immediately relevant to the classification of the material.

The right to freedom of expression

57. Section 23(2) of the FVPC Act gives the Classification Office the authority to classify a publication as objectionable after taking into account all the matters referred to in ss 3



to 3D if it is likely to be injurious to the public good. There is a tension between this authority, and the general presumption of the right to freedom of expression as articulated in the NZBORA. However, this tension is addressed by ensuring that this right is only limited where it is reasonable and demonstrably justifiable to do so as set out in the conclusion below.

Conclusion

58. The publication promotes and supports criminal acts including mass murder, terrorism and the killing of children to a high extent and degree. It presents this justification in a manner that is intended to glorify the writer and inspire others towards terrorist violence. It identifies other possible groups, individuals and locations for attack, and references means of carrying out attacks.
59. The Classification Office notes the incorrect assertion [at Para 21] by the Applicant that the “[m]anifesto is a dispassionate exposition of a political philosophy and as such is of a different order to those matters which come within the purvey [sic] of the Act”.
60. *The Great Replacement* is not a theoretical document, nor a historical one such as Karl Marx and Friedrich Engels’ treatise *The Communist Manifesto* or Adolf Hitler’s autobiographical manifesto *Mein Kampf*.¹⁹ It is a publication that is inexorably linked with the worst act of mass murder and terrorism in New Zealand which it justifies as both rational and necessary. More significantly, it directly encourages the intended audience to carry out further acts of criminal violence and terrorism. Other contemporary publications²⁰ that similarly promote and encourage the murder of civilians to support an extremist ideology have been classified objectionable under the FVPC Act using the same reasoning in the recent past.
61. The link to the Christchurch mosque attacks and the alleged attacker increases the impact and persuasiveness of the contents to those vulnerable to radical extremism.
62. The Applicant states that by including information about possible terrorist targets in New Zealand, “[t]he Manifesto adds nothing to what any person would know” [at Para 72(b)], and that including information about means and methods for terrorist attacks is “[m]inimal and nothing novel” [at Para 72(c)]. The Classification Office would comment in relation to this that while likely not persuasive or harmful to most adult readers, there is a very real risk of this publication persuading some young people and adults who are vulnerable to the way it promotes terrorist violence, in particular those who share the same ideology as the writer. The strong possibility that even a small number of

¹⁹ *The Communist Manifesto* was banned in Tsarist Russia and in Nazi Germany. The printing of *Mein Kampf* (in German) was banned in Germany by the Bavarian state government (the copyright holders) from 1945 until 2016 when the copyright lapsed. Both publications were freely available in many other countries during these periods.

²⁰ See footnote 5.



individuals may be persuaded to act on the writer's message (as appears to have occurred in the case of the attacks in Poway, California) creates a high level of risk to the safety and security of all New Zealanders.

63. In classifying the publication the right to freedom of expression, that is to seek, receive, and impart information and opinions protected under s 14 of the NZBORA must be considered, together with s 5 that states that this freedom is subject "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".
64. The Great Replacement should not be classified as objectionable because it is an example of hate speech' (although it is evidently a racist, discriminatory tract that most New Zealanders would find repugnant), nor should it be banned if it were true that it simply expressed extreme political and social views. The expressions of extreme and racist perspectives are not by themselves sufficient to warrant an objectionable classification in New Zealand.
65. However, the publication that is the subject of this application to the Board does not merely express extreme and racist political views. The Classification Office submits that an objectionable classification for this publication is considered to be a demonstrably justified limit on freedom of expression due to the promotion of terrorism and criminal violence, and the likelihood of significant, real injuries to the public good – namely further incidents of terrorism and criminal violence – arising directly from the publication's continued availability.
66. The publication does contain claimed 'justifications' for the Christchurch mosque attacks. In its decision the Classification Office recognised that the publication forms part of the context of the attacks and provides some information in relation to them. Accordingly, it could be of value to researchers and analysts, as well as reporters seeking to inform the public.

The Classification Office considered imposing a tailored restriction allowing access to researchers, analysts and journalists. However a restricted classification is inconsistent with the classification of, and degree of harm associated with, similar promotional material from other known terrorist sources. Furthermore, a tailored restriction could introduce uncertainty and may reduce the effectiveness of the classification as a protective measure for the New Zealand public.

67. Members of the public who believe they have a legitimate interest in possessing the publication have had the ability to lodge an application to the Chief Censor for an exemption under s 44 of the FVPC Act.
68. As of 01 July 2019 the Classification Office has granted 23 exemptions to a variety of news outlets, journalists, academics, analysts and other members of the public. As of



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the same date only three requests for exemptions have been declined which illustrates that the exemption process is working to allow access to the publication by those with a verifiable need while still maintaining the integrity of the classification and significantly reducing the likelihood of injury to the public good. The Applicant was granted an exemption on 8 April 2019 for the purposes of appealing the classification to the Board.

David Shanks
Chief Censor

11 July 2019