

36th MEETING

18<sup>th</sup> APRIL 2001

23-33 MARY STREET

SURRY HILLS NSW

**PRESENT:** Ms Barbara Biggins (Convenor)  
Mr Jonathan O’Dea (Deputy Convenor)  
Ms Glenda Banks  
Ms Joan Yardley

**APPLICANT:** AdultShop.com Limited

**BUSINESS:** To review the decision of the Classification Board to assign the classification RC (Refused Classification) under the *Classification (Publications, Films and Computer Games) Act 1995* to the film *Please*.

## **DECISION AND REASONS FOR DECISION**

### 1. **Decision**

The Classification Review Board decided to set aside the decision of the Classification Board, and to classify the film *Please* X18+ with the consumer advice “contains real depictions of actual sexual activity”.

### 2. **Legislative Provisions**

The *Classification (Publications, Films and Computer Games) Act 1995* (the Act) governs the classification of films and the review of classification decisions. The Act provides that films be classified in accordance with the National Classification Code and the classification guidelines. Relevantly, the National Classification Code (the Code) in paragraph 1 of the Table under the heading “Films” provides that films that “depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend

against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified” should be classified “RC.”

Further, the Code provides that films that

a) contain real depictions of actual sexual activity between consenting adults in which there is no violence, sexual violence, sexualised violence, coercion, sexually assaultive language, or fetishes or depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers, in a way that is likely to cause offence to a reasonable adult; and

b) are unsuitable for a minor to see

may be classified “X”.

In addition, the *Guidelines for the classification of films and videotapes (Amendment No. 3, 18 September 2000)* provide, in part that, “No depiction of violence, sexual violence, sexualised violence or coercion is allowed in the category. It does not allow sexually assaultive language. Nor does it allow consensual depictions, which purposefully demean anyone involved in that activity for the enjoyment of viewers. Fetishes such as body piercing, application of substances such as candle wax, “golden showers”, bondage, spanking or fisting are not permitted.

### 3. **Procedure**

Four members of the Review Board viewed the film at its meeting of 18 April 2001.

### 4. **Matters Taken into Account**

In reaching its decision the Board of Review had regard to the following:

- (a) the applicant’s Application for Review
- (b) the film *Please*
- (c) written and oral arguments made by Ms Elvis Caneers-Barnes and Mr John Davey on behalf of the applicant
- (d) the relevant provisions in the Act
- (e) the relevant provisions in the National Classification Code as amended in accordance with section 6 of the Act and endorsed by Censorship Ministers
- (f) the current Classification Guidelines for the classification of Films and Videotapes determined under section 12 of the Act.

## **5. Findings on material questions of fact**

- 5.1 The film was one of a number on a video tape containing a series of unrelated scenarios containing real depictions of actual sexual activity between consenting adults.
- 5.2 The Review Board particularly considered the scenes cited by the Classification Board as leading to a RC classification. These were at 7-9 minutes and 31-32 minutes. In both instances a male is seen to smack or spank a female's genitals a number of times.
- 5.3 The Review Board found that neither of the two scenes contained a depiction of a fetish such as spanking. The Review Board found that the film contained real depictions of sexual activity and was appropriately classified X 18+.

## **6. Reasons for the Decision**

- 6.1 The Review Board based its decision to classify the film X18+ with the consumer advice "contains real depictions of actual sexual activity" on its content as described in 5.1 to 5.3 above.
- 6.2 To assist it in its task of determining whether the scenes cited above in 5.2 constituted depictions of a fetish such as spanking, the Review Board examined the intent of the Code and Guidelines in this regard.
- 6.3 The Review Board found that while some of these "fetishes" such as the application of candlewax, golden showers, bondage and fisting can be fairly easily recognised, the same cannot be said of "fetishes such as spanking". The Review Board saw a potential distinction between individual acts of spanking and "a fetish such as spanking".
- 6.4 The definition in the glossary to the Guidelines provides that a fetish is "an object, an action, or a non sexual part of the body which gives sexual gratification". This definition also gives rise to problems of interpretation, viz there are many actions that give sexual gratification but which would not usually be deemed to be "fetishes"- such as kissing, and playful slapping or smacking.
- 6.5 Consistent with similar recent decisions dating from December 2000, the Review Board found that a common characteristic of the list of "fetishes such as ...." in the Guidelines, and which arise from the Code, was that these either demean, or cause harm or pain, in a sexual context, for sexual gratification.

- 6.6 Using this analysis, the Review Board observed that the relevant depictions contained no elements of a portrayal that was demeaning to the participants for the enjoyment of viewers (in the sense used in the Code and Guidelines). Further, the smacks to the genitals were not of a long duration or strong intensity and did not appear to contain elements of punishment. As a consequence, the majority of the Review Board concluded that the behaviour depicted was that of smacking to promote sexual excitement, and that there were no indicators that this was a depiction of “a fetish such as spanking”.
- 6.7 The applicant argued that the Classification Board:
- (a) did not take sufficient account of the nature of the film.
  - (b) were unable to utilise Classification Review Board decisions pertaining to “new benchmarks” in the definition of spanking/smacking as a sexual practice as opposed to as a fetish.
  - (c) failed to take full account of the wording and intent of the Classification Act and Code.
  - (d) did not reasonably apply the Film Classification Guidelines as they relate to depictions of fetish activity such as spanking.
  - (e) did not demonstrate sufficient evidence to substantiate that fetish activity occurred.
- 6.8 The Review Board found that the applicant’s arguments had some validity.
- 6.9 The Review Board concluded that as the film contained real depictions of actual sexual activity between consenting adults, in a way that that is likely to cause offence to a reasonable adult, the film was appropriately classified “X18+”. The Review Board’s decision to apply the consumer advice line of “Contains real depictions of actual sexual activity” is made having regard to the content as described in 5.1.

## **7. Conclusion**

The Review Board's decision is to classify the film *Please* "X18+" with the consumer advice "contains real depictions of actual sexual activity".

This decision is taken after full consideration of the applicant's submission, and after assessing the film as a whole against the relevant legislative criteria, including those contained in the Code, and in the current Classification Guidelines for Films and Videotapes determined under Section 12 of the Act.

Barbara Biggins  
Convenor