



Australian Government
Classification Review Board

20 September 2004

23-33 MARY STREET
SURRY HILLS, NSW

MEMBERS: Ms Maureen Shelley (Convenor)
The Hon Trevor Griffin (Deputy Convenor)
Ms Dawn Grassick
Mr Robert Shilkin

APPLICANT: Mr David Ross (Ross)
Represented by Mr David Haines, Consultant; and Ms Fiona Patten, Consultant

BUSINESS: To review the Classification Board's decision to classify the film *Shadow Theatre* (the film) X18+ with the consumer advice 'Contains sexually explicit material'.

DECISION AND REASONS FOR DECISION

1. Decision

The Classification Review Board (the Review Board) classified the film R18+ with the consumer advice 'Depicts sexual activity'.

2. Legislative provisions

The *Classification (Publications, Film and Computer Games) Act 1995* (the Act) governs the classification of films and the review of classification decisions. Section 9 of the Act provides that films are to be classified in accordance with the National Classification Code (the Code) and the classification guidelines.

Relevantly, the Code in paragraph 3 of the Table under the heading 'Films' provides that films (except RC films, X films) that are unsuitable for a minor to see, are to be classified 'R'. The Code also states various principles for classifications, including

that ‘adults should be able to read, hear and see what they want’ and that ‘minors should be protected from material likely to harm or disturb them’.

Further, the Code provides that Films (except RC films) that are unsuitable for a minor to see and contain real depictions of actual sexual activity between consenting adults in which there is no violence, sexual violence, sexualised violence, coercion, sexually assaultative 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, are to be classified X.

Section 11 of the Act requires that the matters to be taken into account in making a decision on the classification of a film include the:

- (a) standards of morality, decency and propriety generally accepted by reasonable adults; and
- (b) literary, artistic or educational merit (if any) of the film; and
- (c) general character of the film, including whether it is of a medical, legal or scientific character; and
- (d) persons or class of persons to or amongst whom it is published or is intended or likely to be published.

Three essential principles underlie the use of the 2003 *Guidelines for the Classification of Films and Computer Games* (the Guidelines), determined under s.12 of the Act:

- The importance of context
- Assessing impact
- Six classifiable elements – themes, violence, sex, language, drug use and nudity.

3. Procedure

Having earlier received a valid written application for review, four members of the Review Board viewed the film *Shadow Theatre* at the Review Board’s meeting on 20 September 2004.

The Review Board then received oral submissions from Mr David Haines and Ms Fiona Patten representing the Applicant, which was confirmed in a written submission.

The Review Board then met in camera to consider the matter.

4. Evidence and other material taken into account

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

- (i) Ross’ application for review;
- (ii) The oral submissions of Ross’ representatives;

- (iii) the relevant provisions in the Act;
- (iv) the relevant provisions in the Code, as amended in accordance with s.6 of the Act; and
- (v) the Guidelines.

5 Synopsis

The film, which is of 11 minutes duration, depicts a man and woman engaged in implicit sexual activity, filmed through a screen. The couple engage in sexual acts whilst the woman is cradled in a swing. At times she has her feet inserted into stirrups. At other times, she is seated in the swing with her feet on the floor. On one occasion the woman is kneeling on the floor with the man behind her engaged implicitly in rear-entry sexual intercourse. Throughout the film the couple implicitly engage in fellatio, cunnilingus and frontal and rear-entry sexual intercourse.

6 Findings on material questions of fact

The film shows a couple implicitly engaged in sexual activity. It has no accompanying sound track, there is no music and no dialogue, and there are no sound effects.

The film is a “blue” film in that it is shown in the colour blue – no other colours are shown, nor are black and white used.

The actors are shown in silhouette and a strong light is cast from behind them. The effect of the light is that the bodies of the actors appear distorted and slightly ethereal and distorting the images of small parts of the body such as fingers and the male actor’s penis. They appear to have blurred outlines.

The techniques used in the film (the colour blue, the strong back light and the absence of sound) diminish the impact of the film.

The Review Board found that the film, while depicting sexual activity, did not provide filmic evidence such that a determination could be made that the movie showed actual sex. All of the activity in the film could have been realistically simulated sexual activity. As the film’s sole theme was sexual activity, there were no other classifiable elements depicted.

7 Reasons for the decision

The Review Board based its decision to classify the film *Shadow Theatre R* with the consumer advice “depicts sexual activity” on the content of the film as set out in five and six above.

8 Summary

As the film depicts realistic sexual activity, the Review Board determined that it was unsuitable for a minor to see. Also as a determination could not be made that the sexual activity depicted was actual sex, the film did not warrant an X classification.

On this basis the film is classified R with the consumer advice 'Depicts sexual activity'.