



CLASSIFICATION REVIEW BOARD

21 March 2003

23-33 MARY STREET
SURRY HILLS, NSW

MEMBERS: Ms Maureen Shelley (Convenor)
Mr Jonathan O’Dea (Deputy Convenor)
Ms Kathryn Smith
Dr Robin Harvey
Ms Jan Taylor

APPLICANT: United International Pictures

BUSINESS: To review the Classification Board’s decision to classify the film *Ned Kelly* ‘MA15+’ with the consumer advice ‘Medium Level Violence, Adult Themes’ under the *Classification (Publications, Films and Computer Games) Act 1995*

DECISION AND REASONS FOR DECISION

1. Decision

The Classification Review Board (the Review Board) decided to classify the film *Ned Kelly* ‘M15+’ with the consumer advice ‘Medium level Violence, Adult Themes’.

2. Legislative provisions

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

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

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

3. Procedure

Five members of the Review Board viewed the film at the Review Board's meeting on 21 March 2003.

The Review Board received a written application for review and a supporting written submission from the Applicant. Mr Mike Selwyn, Managing Director, United International Pictures and Mr Tim White, Executive Producer, made a verbal submission on behalf of the Applicant.

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

4. Matters taken into account

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

- (i) the applicant's application for review (including written and verbal submissions);
- (ii) the film *Ned Kelly*;
- (iii) the relevant provisions in the Classification Act;
- (iv) the relevant provisions in the Code, as amended in accordance with section 6 of the Classification Act; and
- (v) the *Guidelines for the Classification of Films and Videotapes*, as amended in accordance with section 12 of the Classification Act.

5. Synopsis

The film is an adaptation of Robert Drewe's novel *Our Sunshine*, the story of the famous Australian bushranger Ned Kelly. The film traces Mr Kelly's life from his initial encounters with Victorian authorities to his later bank robberies and the gang's historic showdown with police at Glenrowan.

6. Findings on material questions of fact

The Review Board found that the film contained a number of scenes of violence, other scenes of nudity and sexual references. Adult themes are present in the apparent suicide of members of the Kelly Gang and in the general violence which makes up the lives of the members of the Kelly family. Some of the relevant scenes take place at night or in darkness.

At approximately 6 minutes a police officer waves a gun at Mr Kelly, hits him and holds him down. Blood is seen on Mr Kelly's face. At 12 minutes a prize fight is shown where punches are exchanged and blood is depicted on the face of one of the pugilists. At 15 minutes a man apparently shoots a horse. It is implied rather than explicit, as it is off screen and no blood is shown. At approximately 26 minutes Miss Kate Kelly slaps the face of police officer Fitzpatrick and her brother pulls out a gun. At 27 minutes Mr Fitzpatrick is thrown out of the Kelly house. A gun is discharged onto the ground. The scene is not menacing in tone. At 31 minutes Mr Kelly threatens to kill Mr Fitzpatrick. At approximately 36 minutes police officer Lonigan is shot dead. He is depicted with a wound to the eye. He is prone on the ground with a wound to the eye and blood is shown. The scene is of approximately 40 seconds duration. At 38 minutes a shoot out between the police and the Kelly Gang takes place. Mr Kelly apparently shoots police officer Kennedy. The action takes place off screen. Mr Kennedy is shown choking and coughing. There is blood on Mr Kennedy. Mr Kelly apparently shoots Mr Kennedy. The actions take place off screen. At approximately 41 minutes Mr Kelly takes Mr Kennedy's watch. Mr Kelly's hands are covered in blood.

At approximately 50 minutes a scene with nudity and sexual references is shown. The police enter a house and surprise two people in bed. The cover is withdrawn from the couple who are briefly depicted nude in bed together.

At approximately 53 minutes the Kelly Gang rob a bank using guns. At 60 minutes the burned carcass of a wild pig is shown. At approximately 61 minutes a crow is shown picking at a dead carcass. At approximately 62 to 63 minutes a scene is shown of Mr Kelly and a horse. Much of what occurs is obscured by darkness. The horse's eye is shown - the horse appears frightened. The horse's hooves are shown. There is sombre music and a sense of menace pervades. Suspense builds. The horse is shown dead and Mr Kelly has blood on his hands. Some members of the Review Board were left with the impression that Mr Kelly drank the horse's blood.

At 64 minutes Mr Dan Kelly calls to a maid to scrub his back whilst he is in the bath. At approximately 65 minutes Dan Kelly asks his brother if God will forgive them for what they have done. His brother replies that he doesn't know. At 68 minutes Miss Kelly goes to the door of her home. The scene is menacing and a sense of fear pervades. At 74 minutes the Kelly Gang are seen priming their guns after the police are seen riding into the town. At 76 minutes Mr Aaron Sherritt is shot. The shooting takes place in the dark. No blood or other detail is seen. At 82 minutes a flashback to Mr Sherritt's shooting is shown. Mr Sherritt is shown apparently dead, with a shot wound to the chest. Blood is shown. At 84 minutes Jane points a gun at Mr Kelly.

At 88 minutes the Kelly Gang discuss the probability of their imminent deaths.

From approximately 90 minutes to 96 minutes an action sequence which contains violence is shown. The police shoot townspeople. The Kelly Gang are shown in armour. The sequence takes place at night in the rain and little blood is seen. A monkey is shot. A townsman is shot, blood is shown, the man cries out. Another townsman is shot. Mr Kelly goes out of the inn to face the police. The music is sombre. A police officer shoots Mr Joe Byrne between the plates of his armour. Blood is shown. A lion is shown apparently dead in its cage. Little detail is shown and the cameras do not dwell on the wounds or blood. Little blood spray or splatter is depicted. The clothes of the townspeople are dark, as are the police uniforms and the Kelly Gang's armour. As a result of this, the darkness and the rain, and of the techniques used by the filmmakers, little detail can be seen.

At approximately 98 minutes the police set fire to the inn. Kelly Gang members Mr Dan Kelly and Mr Steve Hart are inside the inn discussing their chances of survival. At 100 minutes they hold hands. One man puts a gun to his head. A shot is heard but the shooting is shown off screen. At 101 minutes a clearly wounded Mr Ned Kelly shoots his gun to get the police's attention. Police officers shoot repeatedly and Mr Kelly falls to the ground. He is shown apparently wounded but no blood is shown. At 103 minutes a medical scene is shown. The doctor has blood on his hands and there is blood on Mr Kelly's arm. At approximately 104 minutes Mr Kelly is depicted apparently wounded but sitting upright in bed. Within the same minute text appears on screen stating that despite petitions signed by 32,000 people Ned Kelly was hanged. The film ends.

7. Reasons for the decision

Whilst the film is one which contains violence much of it is low in impact and the treatment is discreet. The scenes of Mr Lonigan's death, that of Mr Kennedy and the shoot out at the inn have higher impact than the other scenes.

The Review Board took note of the applicant's submission regarding the suicide of Mr Hart and Mr Dan Kelly. The applicant states in the written submission:

"This section has been edited in such a way that both shots are off camera. In fact, there is not even any visual confirmation of the death of Dan Kelly. Given that the published police record of the events at Glenrowan explicitly states that they took their life and that two bodies were found side by side with pistols close by, we suggest that the outcome is so well known that such a carefully structured reconstruction could not be said to have a high degree of impact."

The Review Board concurred with this view. The Review Board noted that the filmmakers had made efforts to remain faithful to known historical facts of the Kelly Gang story, which is one familiar to most Australians.

The Review Board noted the applicant's submission

"...the climactic shootout at Glenrowan. Again following eyewitness accounts, the film depicts the police opening fire and the death or wounding of some of the hostages. All images are as brief as is consistent with establishing the facts."

The Review Board found that the filmmakers had made efforts to render an historical account of the main details of the Kelly Gang story. Whilst they clearly introduced some fictional characters for filmic reasons, this did not detract from the historical account portrayed. The Review Board also considered that the film had educational merit. Whilst some of the scenes had higher impact than others they were not seen as gratuitous and were necessary in the context of the known facts.

8. Summary

The Review Board found that the film warranted a M15+ classification with the consumer advice of medium level violence and adult themes as the depictions of violence were neither prolonged nor shown in detail. Where there were scenes that contained detail, such as in the Lonigan shooting, Mr Dan Kennedy's death and the final shootout at Glenrowan, they were not of high impact because of the discreet treatment, nor were they - given the historical nature of the subject - gratuitous. The adult themes pertaining to suicide and the violent, turbulent lives of the Kellys were treated discreetly and the impact was not high.