



Australian Government

Classification Review Board

07/9113

Meeting	26 September 2007
Members	The Hon Trevor Griffin, Deputy Convenor and Chairperson Mrs Gillian Groom Ms Ann Stark
Applicant	JWD
Business	To determine whether JWD is a person aggrieved by a decision of the Classification Board.

DECISION AND REASONS FOR DECISION

JWD (the Applicant) has made an application for the review of a decision by the Classification Board to classify the film *Shoot 'Em Up* R18+ (restricted to persons 18 years and over). A preliminary issue requires resolution, namely, whether or not the Applicant is a person aggrieved by the decision of the Classification Board.

A Review Board panel of three persons considered the application on 26 September 2007 so far as the status of the Applicant was concerned and unanimously decided that the Applicant is not a person aggrieved within the meaning of section 42 of the *Classification (Publications, Films and Computer Games) Act 1995* (the Act).

The relevant provisions of that section provide:

- (1) Any of the following persons may apply to the Review Board for a review of a decision: ...
 - (d) a person aggrieved by the decision.
- (2) ...
- (3) Without limiting paragraph (1)(d), if the decision referred to in that paragraph is a restricted decision, the following persons or bodies are taken to be persons aggrieved by the decision:
 - (a) a person who has engaged in a series of activities relating to, or research into, the contentious aspects of the theme or subject matter of the publication, film or computer game concerned;
 - (b) ...
- (4) However, a person or body is not aggrieved by a restricted decision because of subsection (3) if the decision was made before:

- (a) the person engaged in a series of activities relating to, or research into, the contentious aspects of the theme or subject matter of the publication, film or computer game concerned; or
- (b) ...

The Applicant is aged 15 and has expressed a keen interest in film. In the course of making his application he has written to the Review Board on a number of occasions in support of his application. Those writings included the answers to questions¹ asked of the Applicant prior to the Review Board considering the preliminary issue.

In essence his argument is that:

1. He has a keen interest in film, particularly action films
2. He has been looking forward to seeing this 'exciting action' film *Shoot 'Em Up* since mid-2006
3. He has been reading reviews of the film through the months following mid-2006
4. He has watched trailers, read reviews, read the Classification Board's report and read about the film's content and he does not agree with its classification
5. From mid-March 2007 he has seen nearly every film in the cinemas and enjoys doing so, and
6. As a result of the Classification Board's decision to classify the film R18+ he is now unable legally to view the film, as he is 15 years of age, but must wait approximately 25 months to do so.

The Applicant argues that for these reasons and on the basis of the information contained in his communications to the Review Board, to which the Review Board has had regard to the extent of their relevance, he is an aggrieved person.

'Aggrieved person' is not defined in the Act, but there have been a number of cases where the meaning of the phrase has been considered. Many of those relate to standing in Courts and Tribunals.

What is the scope of the phrase 'person aggrieved' by the decision? The *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act) uses the formulation 'a person aggrieved by a decision to which this Act applies'. The ADJR Act defines 'person aggrieved' as including a person whose interests are affected by the decision, conduct or failure to make a decision.

A wide interpretation has been given to the phrase 'person who is aggrieved' in the context of the ADJR Act. In *Tooheys Ltd v Minister for Business and Consumer Affairs* (1981) 54 FLR 421, Justice Ellicott held that:

the words 'a person aggrieved' should not, in my view, be given a narrow construction. They should not, therefore be confined to persons who can establish that they have a legal interest at stake in the making of the decision.

Ellicott J went on to add:

This does not mean that any member of the public can seek an order of review. I am satisfied, however, that it at least covers a person who can show a grievance which will be

¹ Those questions were: (1) Have you made any films? (2) If so, have you had them screened? (3) Do you plan to make any films? (4) Have you written any critiques of films? (5) If so, have you had any such articles published?

suffered as a result of the decision complained of beyond that which he or she has as an ordinary member of the public.

Much of the analysis by the Courts of 'person aggrieved' refers back to cases which consider the common law test of whether a person has a 'special interest' which gives them standing to seek remedies for a breach of the law.

In *Ogle v Strickland* (1987) 71 ALR 41, Justice Fisher decided that two priests had sufficient interest to challenge a decision of the Censorship Board made under the *Customs (Cinematograph Films) Regulations* which approved the registration of a film called *Je Vous Salue Marie* (Hail Mary). Fisher J stated:

I am of opinion that the appellants do stand in a different position from other members of the community who profess the Christian faith. I attach significance to the fact that as priests and teachers their interest and their activities are not limited merely to professing the Christian faith. Their interest in my opinion extends beyond that of other members of the Christian community whose limited concern could be fairly described as only 'intellectual or emotional', which words were used by Gibbs C.J. at p.35 of the *Onus* case. The vocation and professional calling of the appellants being more than an intellectual or emotional concern requires greater weight to be given to their interest in the subject matter of the film and in the question whether it is blasphemous. They have, in the words of Stephen J., a 'closer proximity' to this subject matter than other members of the community.

There are other cases which are also relevant and not inconsistent with the above.

The Classification Review Board concluded that a person aggrieved must be a person with an interest in the decision of the Classification Board which is greater than that of an ordinary member of the public. The interest adversely affected must be more than merely an emotional or intellectual interest.

While the Applicant submits that he has an interest in film, even a passion which places him in a different category from other citizens, the Review Board is not satisfied that he has an interest greater than an ordinary member of the public.

The Review Board also considered whether a 15 year old, a minor, could be an applicant and determined that, unlike, say, Court proceedings, there appears to be nothing to prevent a minor from making an application to the Review Board other than, in each case, being satisfied that that person has the necessary capacity to do so.

The Review Board further considered the application of paragraph 42(3)(a) to the Applicant in the light of his submissions and considered that he did not fall within its terms.

Conclusion

In respect of this application the Review Board confirms that it unanimously decided that the Applicant did not fall within the category of an aggrieved person under paragraph 42(1)(d) of the *Classification (Publications, Films and Computer Games) Act 1995*.

Therefore the application for review cannot be entertained by the Review Board.