

35th MEETING

2nd MARCH 2001

23-33 MARY STREET

SURRY HILLS NSW

PRESENT: Ms Barbara Biggins (Convenor)
Mr Jonathan O'Dea (Deputy Convenor)
Ms Glenda Banks
Dr Robin Harvey

APPLICANT: Commissioner of Police, South Australia

BUSINESS: To review the decision of the Classification Board to assign the classification "Unrestricted" under the *Classification (Publications, Films and Computer Games) Act 1995* to "Pictures", a book containing black and white photographs by Robert Mapplethorpe.

DECISION AND REASONS FOR DECISION

1. Decision

The Classification Review Board decided to set aside the decision of the Classification Board to classify the publication **Pictures** "Unrestricted", and to assign the classification "Category 1 - Restricted".

2. Legislative provisions

The *Classification (Publications, Films and Computer Games) Act 1995* (the Act) governs the classification of publications and the review of classification decisions. The Act provides that publications be classified in accordance with the National Classification Code and the classification guidelines.

Relevantly, section 11 of the Act requires that the matters to be taken into account in making a decision on the classification of a publication 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 publication; and
- (c) the general character of the publication, 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.

The National Classification Code (the Code) requires that Classification decisions are to give effect, as far as possible, to the following principles:

- a) adults should be able to read, hear and see what they want;
- b) minors should be protected from material likely to harm or disturb them;
- c) everyone should be protected from exposure to unsolicited material that they find offensive; and
- d) the need to take account of community concerns about:
 - i) depictions that condone or incite violence, particularly sexual violence; and
 - ii) the portrayal of persons in a demeaning manner.

Within the Code, paragraph 3 of the Table under the heading “Publications” provides that publications (except RC and Category 2 restricted publications) that “are unsuitable for a minor to see or read” should be classified “Category 1 restricted”.

In addition, the *Guidelines for the Classification of Publications* (September 1999) provide (in relation to the “Unrestricted” category), in part that:

“Generally, descriptions and depictions of classifiable elements in publications classified ‘Unrestricted’ may contain some detail. However, the impact will not be so strong as to require legal restriction.”

The Guidelines also provide that bona fide artworks which may offend some sections of the adult community may be classified in the ‘Unrestricted’ category when set in an historical or cultural context.”

3. Procedure

- 3.1 Four members of the Review Board examined the publication **Pictures** and heard relevant submissions at its meeting on 2 March 2001.
- 3.2 The Review Board heard oral submissions from Ms Shirley Armstrong, Solicitor, representing the Applicant and Mr Michael Rakusin, representing the Distributor. These representatives had been provided with copies of the Classification Board's report.

4. Matters taken into account

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

- a) the application for review, lodged by the South Australian Police;
- b) written and oral submissions from the Applicant;
- c) oral submissions from the Distributor, Tower Books;
- d) the publication **Pictures**;
- e) the relevant provisions in the Act;
- f) the relevant provisions in the National Classification Code as amended in accordance with Section 6 of the Act, and as endorsed by the State and Territory Ministers responsible for censorship matters; and
- g) the current Guidelines for the Classification of Publications determined under Section 12 of the Act.
- h) The Classification Board's report.

5. Findings on material questions of fact

The Review Board accepted that the South Australian Police had, after bookshop personnel had drawn their attention to the item, taken the relevant publication from an Adelaide bookshop (which was sited in a central Adelaide street, adjacent to a cinema frequented by minors), and submitted it to the Classification Board. The Review Board found that:

- 5.1 **Pictures** contains text and black and white photographs depicting male nudity and homosexual activity. Pages are not numbered.
- 5.2 The book contains a number of potentially problematic photographs, notably depictions of the practice known as "fisting", persons urinating and defecating into other persons' mouths, and genital mutilation resulting in bleeding.
- 5.3 The publication did constitute a bona fide artwork.
- 5.4 The publication was authentically set in a cultural context.

- 5.5 The publication would be confronting and offensive to some sections of the adult community but did not warrant having its classification restricted solely on this basis.
- 5.6 The publication could disturb minors and was therefore unsuitable for viewing by those under 18 years of age
- 5.7 The publication should be classified Category 1 Restricted on this basis.

6. Reasons for the Decision

- 6.1 The Review Board based its decision to classify the publication **Pictures** Category 1 Restricted on the content described in 5.1 to 5.6 above.
- 6.2 The applicant argued in part that:
 - a) the artistic merit of the publication is compromised by the offensive content of a number of the depictions;
 - b) certain depictions constitute “revolting and abhorrent phenomena” within the meaning of the National Classification Code for Publications
 - c) there were very detailed realistic depictions of sexual fetishes in which physical harm is apparent; and
 - d) certain depictions were likely to harm or disturb minors.
- 6.3 The Review Board generally concurred with (a) - (d), particularly with (d).
- 6.4 The Distributor argued in part that
 - a) the book contained classical studies, and was confronting, but this was the nature of great art, even if revulsion and horror are the outcomes
 - b) he distributed all copies of the book in sealed plastic wrapping and is somewhat discerning as to which stores stock the book. However, the book is stocked in certain outlets of major mainstream bookstores.
 - c) It would not be a matter of great moment if the plastic wrapper were required to be kept on and a sticker attached.

- 6.5 The Board acknowledged that the publication is a bona fide artwork. It contains black and white photographs by the late Robert Mapplethorpe, a photographer of international standing. That status may be confirmed by a search of the Internet revealing a comprehensive list of his works and exhibitions in leading galleries.

Pictures presents as a serious work, with a foreword analysing his work, and a comprehensive bibliography. The foreword suggests that **Pictures** is intended to confront and shock.

- 6.6 The Review Board found the publication to be authentically set in a cultural context, viz. the gay liberation movement of the seventies and eighties.
- 6.7 Many of the book's depictions were considered to be confronting or offensive to some sections of the adult community. However, the Review Board also considered this did not, of itself, provide sufficient reason for imposing a "restricted" classification, as the Guidelines make provision for this in the case of bonafide artworks.

The operative factor which led the Review Board nevertheless to place the publication in a "restricted" category was its opinion that the book's content does require an adult perspective and that exposure to many of its images could disturb minors. The impact of the work was considered to be sufficiently strong to require legal restriction. The book is therefore deemed unsuitable for viewing by those under 18 years of age.

In reaching this conclusion, the Review Board did not have regard to the gender of the persons depicted, but rather to the fetishistic and sometimes violent nature of the depictions involving consenting adults, and to the pictures of genital mutilation.

- 6.8 The Review Board acknowledged that the presentation, cost and marketing of the book suggested that it was not primarily targeted at minors. The Review Board did however perceive a very real potential for minors to access the book in a mainstream bookshop if it was placed in the "Unrestricted" category.
- 6.9 In all the circumstances, the Review Board considered the minimum requirement to adequately protect minors and to preserve the book's integrity as a serious work was that it be displayed in a sealed wrapping with the prescribed marking "Restricted: not available to persons under 18years". The Review Board noted that its decision effectively means that the wrapping on the book as distributed should not be removed prior to the book being sold to a person 18 years or over.

6.10 The Board noted that bona fide artworks are afforded special treatment under the regulatory regime for the classification of publications. If **Pictures** had not been so regarded, it would almost certainly, considered at face value, have attracted the next highest classification in accordance with the relevant legislation and guidelines.

7. **Conclusion**

The Review Board's decision is to set aside the decision of the Classification Board to classify the publication **Pictures** "Unrestricted", and to assign the classification "Category 1 - Restricted".

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

Barbara Biggins
Convenor