



CLASSIFICATION REVIEW BOARD

6 June 2003

23-33 MARY STREET
SURRY HILLS, NSW

MEMBERS: Ms Maureen Shelley (Convenor)
Mr Jonathan O'Dea
Ms Kathryn Smith

APPLICANT: Sydney Film Festival

BUSINESS: To review the Classification Board's decision to classify the film *Ken Park* Refused Classification (RC) under the *Classification (Publications, Films and Computer Games) Act 1995*

DECISION AND REASONS FOR DECISION

1. Decision

The Classification Review Board (the Review Board) confirmed the decision of the Classification Board and decided to classify the film *Ken Park* RC.

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.

The Code states that films which “depict, express or otherwise deal with matters of sex” and “violence” “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” are to be classified RC refused classification.

3. Procedure

The Review Board was dealing with an application for sale or hire and not for a film festival application. The original applicants, MRA Entertainment had lodged an application for classification of *Ken Park* for sale or hire (as a video).

A separate application for exemption for a film festival was lodged with the Director of the Classification Board by the Sydney Film Festival (“the Applicant”) under the NSW Classification (Publications, Films and Computer Games) Enforcement Act 1995.

The Review Board was asked by the Applicant to review the decision of the Director. Because the power of the Review Board is limited to reviewing determinations of the Classification Board made under the Commonwealth Classification (Publications, Films and Computer Games) Act 1995 it found that a review of the application for exemption for a film festival was not within its jurisdiction.

The Applicant lodged an application for review in relation to the determination by the Classification Board of an RC classification in respect of the application made by MRA Entertainment. The Board considered that the Applicant was a person aggrieved because it wished to exhibit *Ken Park* at the 2003 Sydney Film Festival.

Three members of the Review Board viewed the film at the Review Board’s meeting on 6 June 2003.

The Review Board received a written application for review and supporting written submission from the Applicant. Mr Ross Tzannes made a verbal submission on behalf of the Applicant and submitted further written material.

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) the applicant’s application for review (including written and oral submissions);
- (ii) the report of the Classification Board relating to *Ken Park* ;
- (iii) Report of the New Zealand Office of Film and Literature Classification relating to *Ken Park* ;
- (iv) the film *Ken Park* ;
- (v) the relevant provisions in the Classification Act;
- (vi) the relevant provisions in the Code, as amended in accordance with section 6 of the Classification Act; and
- (vii) the *Guidelines for the Classification of Films and Computer Games*, as amended in accordance with section 12 of the Classification Act.

5. Synopsis

The film *Ken Park* shows four non-adult teenagers, Shawn, Tate, Peaches and Claude, and their friends, parents and neighbourhood, as they negotiate their lives in a contemporary, and somewhat dysfunctional society. It showcases the teenagers’ interactions with their parents, or parent figures; their own fears and insecurities; their use of drugs and alcohol; their participation in sex with each other and others and their success or failure to negotiate the obstacles that face them and their friends.

6. Findings on material questions of fact

The Review Board found that *Ken Park* contains:

- (a) scenes which depict actual sex, and a fetish
- (b) a number of “high impact” scenes
- (c) several “High Impact” Themes
- (d) scenes which depict child sexual abuse and sexualised violence and deal with matters of sex and violence in a way which offends against the standards of morality, decency and propriety generally accepted by reasonable adults

These findings are explained below.

The Review Board is assisted by a detailed and informative report from the Classification Board relating to *Ken Park* . In these reasons the Board adopts some of the descriptions made by the Classification Board in relation to certain critical scenes as it found those descriptions to be accurate.

Finding that the *Ken Park* contains scenes which depict actual sex and a fetish

In relation to the scenes at 54 minutes and 83 minutes.

The Classification Board report states

“54 mins – After having taken a bathrobe belt from the bathroom, Tate returns to his bedroom, where he has been watching women’s tennis on his television. He loops the belt around the doorknob and tests it around his neck before putting a pillow against the door, taking off his underwear, leaning back, and wrapping the belt around his neck. He then engages in explicit auto-erotic asphyxiation as he is aroused by the women’s tennis match in the background. The shots of Tate range from close ups of his genitals as he explicitly masturbates or his face to medium full length body shots. The tennis players are heard grunting as they play. At 55 minutes the camera focuses on his face as he implicitly orgasms and then pans down to his penis (which he still holds), with a semen trail. His eyes are closed.”

The Review Board noted that Tate tugs at the belt around his neck throughout this two minute scene.

83 mins – A four minute sequence involving Shawn, Peaches and Claude commences with the three of them lying naked on a bed, Peaches between the two young men [sic]. They fondle and kiss. At 83 minutes there is obscured fellatio and rear entry intercourse (the latter by Claude to Peaches, who is implicitly fellating Shawn) seen in a medium shot. The side view scene shows Claude thrusting and her [Peaches] head in Shawn’s lap. The scene is inter cut with their post coital ruminations as they lie back and chat. At 84 minutes there is an explicit shot of Peaches’ tongue on Shawn’s penis and then an obscured shot of Shawn giving cunnilingus to Peaches. At 85 minutes there is a shot of an erect penis in-between Peaches’ thighs, with some movement visible. The camera shot is only of her thigh area. Then there is a long shot of Peaches seated astride Claude. They kiss as she moves up and down. Shawn is standing nearby at the kitchen counter, flipping through a magazine and watching them. At 86 minutes there is a medium shot focusing on Shawn’s buttocks as he thrusts, followed by Peaches’ hand over Claude’s penis as she explicitly fellates him. There is a saliva trail visible between her mouth and his erect penis as she lifts her head up. There is then a shot of Claude’s hand in slow motion masturbating Peaches, including some digital penetration. The camera pans up from her thighs up her body and ending in a three-quarter length shot. Shawn licks her nipples as Claude masturbates her.

The Review Board noted that, contrary to what is stated in a report from the New Zealand Office of Film and Literature Classification (the Classification Office) submitted by Mr Tzannes, this scene was romanticised and appeared choreographed. Mr Tzannes submitted the Written Reason for Decision Section 12 from the NZ Classification Office. He said that the decision showed that the film had serious merit and was worthy of serious discussion.

The Review Board noted that the NZ report states:

Though the activity [the reference here is to the scenes of sexual activity] is depicted explicitly, it is not shown in graphic detail or in close up but more as observational, and does not present as being choreographed merely for the sake of the viewer.

Contrary to this view the Review Board found that the sex scenes were detailed (erect penises, semen or mucous trails, open vagina) and there were shots in close up. The Review Board noted that the scene at 83 minutes

- Had an overlaid sound track of relaxed Van Morrison-style music – in contrast to the skate punk and alternative music played by the characters when they were listening to music;
- Was bathed in a mellow golden light which lent considerable romantic atmosphere; and
- The movements of the participants appeared graceful and at times balletic and the scene seemed choreographed.

It was a visually appealing, romanticised scene depicting three attractive teenagers participating in extended sex and sexual play. The Review Board found that the scene contained actual sex in that it depicted actual digital penetration.

Finding that *Ken Park* contains a number of “High Impact” Scenes

There were several scenes throughout the film that were of high impact. These are detailed within the Classification Board’s report and took place at 17 minutes, 39 minutes and 50 minutes.

The Classification Board report states:

17 mins – Shawn and his girlfriend’s mother, Rhonda, are lying on her bed. She lies back with her legs up as he engages in obscured masturbation and cunnilingus with her.

39 mins – Rhonda puts her hand down Shawn’s briefs and implicitly masturbates him. The camera pans up to them kissing before again showing her hand moving under his pants.

50 mins – Side view of the genital areas of Peaches and Curtis as he lies with his wrists tied to the bedhead. She first rubs his clothed crotch area, after which she implicitly puts her finger into her vagina and then into his mouth. There is a brief shot of Curtis’ erect penis. Peaches then implicitly fellates him. Her father enters the room and, horrified, throws his daughter from the bed. He hits Curtis’ head, grabs his neck and shakes the young man’s [sic] head aggressively. Peaches is on the floor, sobbing and screaming at her father to stop.

In addition to these scenes, another of high impact took place at 1 minute when a teen boy, whom we later learn is *Ken Park*, sitting at a skate park smiles, holds a gun to his head and shoots himself. There is blood spray as the shot is heard. The camera

pulls back to show a panoramic scene of the teenager lying prone on the ground with blood pooling around his head and other teenagers and younger children – mostly young boys – standing around looking at his body.

At 120 minutes Claude's father is shown urinating into a toilet. He removes his trousers, his penis is shown, the sound of urination is heard, the camera moves closer to the penis and the urination stream is shown. At approximately 1 minute in duration, the scene is prolonged and gratuitously detailed.

Finding that *Ken Park* contains several “High Impact” Themes

In addition to particular scenes of high impact, the film contains several themes of high impact. These were

- a) psychological abuse of children by their parents (Claude with his brutal father and Peaches with her morbidly-obsessed religious father),
- b) neglect by parents of their children (Rhonda with her younger daughter - who is depicted as about 5 years old put in front of a TV watching what appears as first to be porn a movie but what we discover later to be the Playboy channel - whilst Rhonda has sex with her older daughter's boyfriend upstairs) and
- c) the misuse of power by a clearly disturbed teen over his frail grandparents (Tate's verbal and physical abuse of his grandmother and grandfather).

Whilst these themes of themselves would not necessarily warrant an “R” classification, they add to the overall impact of the film ensuring – in addition to the high impact and very high impact scenes – that the film is very confronting.

Finding that *Ken Park* contains scenes which depict child sexual abuse and sexualised violence and deal with matters of sex and violence in a way which offends against the standards of morality, decency and propriety generally accepted by reasonable adults

The Review Board considered that the cumulative impact of the scenes at 54 minutes, 69 minutes, 75 minutes and 83 minutes depict or deal with matters of sex and violence in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults. The Review Board found that this impact was such that the film can not be classified.

The Classification Board's report states

69 mins – Claude is asleep in his bed. His drunken father enters his room and crawls into bed next to him. He [the father] then gets up and sits at the end of Claude's bed, at which point he starts stroking Claude's calf and inside knee. His son's sleep is disrupted and he stirs restlessly at the contact. The father puts his hand up the left leg of Claude's boxer shorts and puts his head down, either implicitly fellating or attempting to fellate. The angle is from behind the father's head. Claude wakes and struggles, throwing him [the father] off the bed. His father says “it's okay Claude, it's just me Dad”, before he [the father] falls to the ground. He comments “nobody loves me” as his son leaves the room.

75 mins – In a flashback sequence Tate walks, naked, to the kitchen, where he cuts a piece of cake and eats it as he walks into his grandparents’ bedroom with the cake knife. As they lie asleep, he implicitly stabs his grandfather twice. The motions are seen and there is some blood spray and blood visible on the grandfather’s face but there is no visible entry wound. He [Tate] comments that “the skin was thick, like leather. He twitched a little, like a chicken”. He then implicitly stabs his grandmother, again with no injury detail. Before he kills her she says “I love you Tate”. He comments “she’s a passive aggressive bitch who doesn’t respect my privacy.” After he kills them he is heard in voice-over saying “then I saw them like that, I started to get an erection. Then Legs started barking and I went soft”.

In addition, the scene at 69 minutes where Claude’s father attempts to fellate his son, or implicitly fellates his son, is one that depicts child sex abuse. Claude’s father has his hands inside his son’s boxer shorts in the groin area. The fly of the shorts is open. Claude is depicted in the film as a teenage schoolboy.

Also the scene at 75 minutes where a naked Tate implicitly stabs his grandparents and is shown with blood spatter on his face as he narrates – in flashback – that he “started to get an erection” is one of sexualised violence.

Claude and Tate like the other teenage characters in *Ken Park* are depicted as being of school age. They are shown getting on to the school bus with their schoolbags. They are intended to represent teenage schoolchildren. Mr Tzannes said in his evidence that the characters were depicted as 15 to 17 year olds. The Board found that none of the teenage characters was depicted as an adult

7. Reasons for the decision

In reaching its decision to refuse classification for *Ken Park* the Review Board took particular note of the Code in regard to films section 1 (a). The Code states that films which “depict, express or otherwise deal with matters of sex” and “violence” “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” are to be classified RC refused classification.

In addition, the Guidelines state in the R classification that “sexual activity may be realistically simulated. The general rule is ‘simulation, yes – the real thing, no’.”

The Guidelines state that for the X classification “No depiction of violence, sexual violence, sexualised violence or coercion is allowed in this category”. Further the Guidelines for X state “As the category is restricted to activity between consenting adults, it does not permit any depictions of non-adult persons, including those aged 16 or 17, nor of adult persons who look like they are under 18 years. Nor does it permit persons 18 years of age or over to be portrayed as minors”. Under the Refused Classification section of the Guidelines, it states:

“Films and computer games will be refused classification if they include or contain any of the following” under the headings crime and violence
“Depictions of child sexual abuse” and later under the heading of sex
“Gratuitous, exploitative or offensive depictions of: (i) sexual activity accompanied by fetishes or practices which are offensive or abhorrent”.

There was no evidence before the Board about the actual age of the actors in *Ken Park*, nevertheless the Board found the actors were depicting characters who were not adults and so the actual age of the actors was not relevant.

It was the Review Board's determination that the scenes at 54 minutes, 69 minutes, 75 minutes and 83 minutes were of a cumulative impact such that they exceeded material that could be accommodated in the R classification. The Review Board noted that the film could not be accommodated in the "X" classification as the Code does not allow for "violence" "sexualized violence" "or fetishes". A number of the scenes detailed contained these elements including those at 1 minute, 54minutes and 75 minutes.

Additionally, the Guidelines state "films and computer games will be refused classification if they include or contain any of the following" and a list is given which includes "depictions of child sexual abuse". It was the Review Board's determination that the scene at 69 minutes was such a scene. It was prolonged and contained gratuitous detail. In addition that scene and the other depictions of sexual activity depicted non-adult persons (that is people under 18 years). The X guidelines exclude the depiction of sexual activity involving non-adult persons or adult persons who look like they are under 18 years.

The Review Board noted Mr Tzannes' very cogent arguments in relation to the principles within the Code and section 11 (b) and (c) of the Act. It also noted the applicant's submission in regard to the educational merit of the film, the social justice agenda of the film maker and the film's "gritty, naturalistic Dickensian" approach to the issues facing the teenagers depicted.

The Review Board determined that the film had some artistic and potential educational merit in facilitating debate or discussion upon important social issues.

However, the Review Board determined, in the majority, that the masturbation scene at 54 minutes was prolonged and contained elements, such as the use of the asphyxiation device and a "semen trail", which were gratuitous and offensive. Also the prolonged sex scene at 83 minutes depicts actual sex in that it contains actual digital penetration. It also contains detail of a penis with mucous trail – possibly semen or possibly saliva, and views of an open vagina during digital stimulation. Some of the details within this scene were considered gratuitous.

It was the determination of the Review Board that, despite the film making a serious attempt to grapple with issues facing many teenagers and having significant artistic merit, the cumulative impact of several scenes was more than what could be accommodated in an R classification for a "sale or hire" classification review application. Two of the relevant scenes contained actual sex. One of the sex scenes included details of a fetish, namely auto-erotic asphyxiation. Another scene depicted child sex abuse.

The Review Board noted that the application for review was for sale or hire (as a video). Under section 11 of the Act the intended audience of the film is relevant. The Review Board noted that for a sale or hire application, as contrasted with a film festival audience with a single restricted screening, the audience is much broader and the screening of the film less controlled.

Overall the purpose, tone, treatment and cumulative effect of the various elements already identified (including numerous scenes that appear prolonged or contained gratuitous detail) result in a higher overall impact such that the film should be refused classification.

8. Summary

The Review Board found that the film contained elements beyond that which could be accommodated in R or X and the film was Refused Classification.