



Australian Government

Classification Review Board

MEMBERS: Fiona Jolly
Melissa de Zwart
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APPLICANT Australian Federal Police

INTERESTED PARTIES

BUSINESS To consider whether the Australian Federal Police should be recognised, under subclause 30(1)(d) of Schedule 7 of the *Broadcasting Services Act 1992*, as a ‘person aggrieved by the classification’ of R 18+ assigned by the Classification Board to ACMA INV-0000-3781; and, if the Australian Federal Police is recognised as a ‘person aggrieved by the classification’, to review that classification.

DECISION AND REASONS FOR DECISION

1. Decision

The Classification Review Board (the Review Board) unanimously has decided to classify ACMA INV-0000-3781 RC.

The Review Board found, under subclause 30(1)(d) of Schedule 7 of the *Broadcasting Services Act 1992* (the BSA), that the Australian Federal Police (AFP) was ‘a person aggrieved by the classification’ of the content by the Classification Board (the Board). The AFP therefore was a person who could apply to the Review Board for a review of that classification.

2. Legislative provisions

Clause 30 of Schedule 7 of the BSA determines who may apply to the Review Board for a review of the classification of content by the Board under that Schedule (unless the content is the subject of a ‘deemed classification’ under subclauses 24 (1) or (2)). Clause 30 states:

(1) If content has been classified by the Classification Board...any of the following persons may apply to the Classification Review Board for a review of the classification:

...

(d) a person aggrieved by the classification.

(2) Without limiting paragraph (1)(d), if the classification referred to in that paragraph is a restricted classification, the following persons or bodies are taken to be persons aggrieved by the classification:

(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 content concerned;

(b) an organisation or association, whether incorporated or not, whose objects or purposes include, and whose activities relate to, the contentious aspects of that theme or subject matter.

(3) However, a person or body is not aggrieved by a restricted classification because of subclause (2) if the classification 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 content concerned; or

(b) the organisation or association was formed, or its objects or purposes included and its activities related to, the contentious aspects of that theme or subject matter.

(4) In this clause:

"restricted classification" means:

(a) for content that does not consist of a computer game or an eligible electronic publication--the classification MA 15+, R 18+, X 18+ or RC;

...

Clause 31 of Schedule 7 governs applications for review and subclause 33(1) states:

(1) For the purposes of reviewing a classification of content, the Classification Review Board:

(a) may exercise all the powers and discretions that are conferred on the Classification Board by this Schedule; and

(b) must make a decision in writing classifying the content.

Clause 24 of Schedule 7 deals with the classification of content by the Board and states that if the content consists of 'the entire unmodified contents of a film' which 'has not been classified under the Classification (Publications, Films and Computer Games) Act 1995' (the Classification Act), then the 'Board is to classify the content under this Schedule in a corresponding way to the way in which the film or computer game, as the case may be, would be classified under the Classification Act'.

Clause 36 states that ‘sections 10, 19, 20, 22, 23A, 24, 25, 26, 27, 28 and 44A, and Division 6 of Part 2’ of the Classification Act do not apply to a classification under Schedule 7.

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, items 1(a) and (b) of the Films table of the Code states that the following films should be classified RC:

1. Films that:

(a) depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena 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; or

(b) describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not).

Item 3 of the Films table notes that ‘films (except RC and X 18+ films) that are unsuitable for a minor to see’ should be classified R 18+.

The Code also sets out various principles to which classification decisions should give effect, as far as possible.

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.

Three essential principles underlie the use of the *Guidelines for the Classification of Films 2012* (the Guidelines), determined under section 12 of the Classification Act:

- the importance of context
- the assessment of impact, and
- the six classifiable elements – themes, violence, sex, language, drug use and nudity.

3. Procedure

The Review Board met on Wednesday 23 October 2013 in response to the receipt of an application from the AFP on 17 October 2013 to conduct the review.

Three members of the Review Board viewed the relevant content on 23 October 2013.

The Review Board heard oral submissions from the applicant. This was provided in addition to a written submission.

The Review Board then considered the matter.

4. Evidence and other background material taken into account

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

- (i) the AFP's application for review
- (ii) the AFP's written and oral submissions
- (iii) the content, *ACMA INV-0000-3781*
- (iv) the relevant provisions in the BSA, the Classification Act, the Code and the Guidelines, and
- (v) the Classification Board's report.

6. Synopsis

The Film 'Barnens O' is a Swedish film produced in 1980. The film is a coming of age story in which a ten year old turning 11 year old boy contends with the imminent onset of puberty and his fear of sexual maturation.

The boy, Reine, experiences a range of situations after skipping summer camp and staying home unsupervised.

7. Findings on material questions of fact

The Review Board assessed the content, *ACMA INV-0000-3781*, and found that it contains aspects of importance under various classifiable elements:

(a) Themes – The predominant theme in the film is that of 'coming of age' and coming to terms with sexuality. The treatment of themes was strong and justified by context.

(b) Violence – The Review Board considered that there was infrequent violence which was justified by context. The Review Board considered that the violence was no higher than strong.

(c) Sex – The Review Board noted that there were a number of scenes of implied sexual activity. The Review Board considered that, subject to the discussion below regarding the depiction of the minor, the scenes of implied sexual activity were no higher than strong.

At approximately 1.08 there is a sequence which lasts for 49 seconds which commences with Reine encountering the naked figure of Maria. Maria is shown lying asleep naked and the entire length of the back of her body, including her buttocks, is visible, as is the side of her left breast. The vision then cuts to Reine who is seated in a barn, visibly upset after encountering Maria naked. He is breathing heavily, he is naked from the waist down, and the camera pans down from his face and chest (at 1.08.25) to his genital area. The boy's erect penis is clearly shown in a close up (at 1.08.30-33), and he touches the shaft of his penis tentatively. The camera pans back to his face and then returns to his penis which is slowly losing its erection.

(d) Language – There a number of occasions on which strong, coarse language is used. The Review Board considered that this was no higher than strong and could be accommodated within the MA 15+ category.

(e) Drug Use – The Review Board noted a number of instances of alcohol use and smoking and considered that the impact of this could be accommodated within a lower classification.

(f) Nudity – The Review Board noted that there were a number of scenes of nudity of the boy and a number of women. With regards to the boy, the images of him lying naked in the bath, examining his genitals for hair, and being showered by 'Nora' are justified by context. The Review Board also noted the full frontal image of Reine posing with a female wig, false eyelashes and makeup. In this scene Reine is seen to grasp his penis and place it between his legs in an apparent effort to look like a woman. The Review Board considered that this image was a long shot and it was not possible to see genital detail. The Review Board considered that this image was also justified by the context and no higher than strong.

The Review Board considered that the images of various women naked were all justified by context and were no higher than strong.

8. Reasons for the decision

The Review Board decided that all of the content and themes, other than the scene depicting Reine's erect penis, were no more than strong in impact and therefore may be accommodated within the lower classification categories. The Review Board considered that the depiction of Reine in the barn with an erection is a depiction of a child engaged in actual sexual activity and that this is content that is likely to cause offence to a reasonable adult as per 1(b) of the code.

The Review Board considered that although the scene was relevant to the story and was brief in duration it is still the depiction of actual sexual activity of a minor and is not justified by context.

The depiction of a child engaged in actual sexual activity, being masturbation, is content that is likely to cause offence to a reasonable adult.

9. Summary

The Review Board decided that the content, ACMA INV-0000-3781, should be classified Refused Classification.