



Australian Government

Classification Review Board

MEMBERS: Fiona Jolly
Melissa de Zwart
Jane Smith

APPLICANT Horwitz Publications

INTERESTED PARTIES

BUSINESS To review the Classification Board's decision to revoke the serial classification of the publication, *Australian Penthouse* – Serial Declaration Number 256240.

DECISION AND REASONS FOR DECISION

1. Decision

The Classification Review Board (the Review Board) unanimously has decided to not revoke the serial classification (Declaration Number 25640) of the publication, *Australian Penthouse*.

2. Legislative provisions

Section 13(3) of the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act) states that the Classification Board may declare that the classification granted for an issue of a publication (the original issue) applies to all future issues, a specified number of future issues, or all future issues published within a specified period. This declaration provides for the 'serial classification' of a publication. Section 13(5) of the Classification Act obliges the Classification Board to revoke a serial classification if the Classification Board is of the opinion that an issue of the publication covered by the serial classification: contains material that, if the issue were being classified separately, would cause it to be classified with a higher classification than the original issue; or contains an advertisement that has been refused approval.

Section 42(1) of the Classification Act provides that certain persons (including 'the publisher of the publication concerned') may apply to the Review Board for the

'review of a decision'. According to section 5 of the Classification Act, the revocation of a serial classification is a 'decision' of the Classification Board.

3. Procedure

The Review Board met on Tuesday 5 November 2013 in response to the receipt of an application from Horwitz Publications on 20 September 2013 to conduct the review.

Three members of the Review Board viewed the relevant publication on 5 November 2013.

The Review Board heard oral submissions from a representative of the applicant, Mr Cameron Murray, and Mr Tony O'Reilly, Kennedy's. 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 relevant provisions in the Classification Act, the National Classification Code (the Code) and the *Guidelines for the Classification of Publications* (the Publications Guidelines).
- (ii) Horwitz Publications application for review
- (iii) Kennedy's (applicant's representative) written and oral submissions
- (iv) the February 2013 issue of *Australian Penthouse* (the original issue)
- (v) the Serial Classification Declaration for a Publication Section 13(3) notice
- (vi) the May 2013 issue of *Australian Penthouse*

The Review Board noted the following background material:

- (i) the Classification (Serial Publications) Principles 2005 made under section 13(4) of the Classification Act
- (ii) the Classification Board's Decision Report for the publication titled, *Australian Penthouse Unrestricted February 2013*
- (iii) the Classification Certificate for *Australian Penthouse Unrestricted February 2013*
- (iv) the Publications Audit Report, dated 20 June 2013 for the May 2013 issue of *Australian Penthouse*

- (v) the letter to Horwitz Publications from the Director of the Classification Board, dated 9 July 2013 (invitation to explain why classification should not be revoked)
- (vi) the letter to the Director of the Classification Board from Australian Penthouse, dated 23 July 2013 (response to above letter)
- (vii) the File Note by the Acting Deputy Director of the Classification Board, dated 9 August 2013
- (viii) the letter to Australian Penthouse (C11/95) from the Director of the Classification Board (Notice of revocation of serial classification - Declaration number 25640).

6. Synopsis

Australian Penthouse is a publication containing photographs, general interest stories, letters and advertisements for adult products and services.

7. Findings on material questions of fact

The Review Board assessed the content in the May 2013 issue of *Australian Penthouse* (which is an issue covered by the serial declaration number 25640) and found that it contains aspects of importance under various classifiable elements:

Sex – The Review Board considered that the issue contained material that would be classified no more than Unrestricted.

The Board in particular considered the images on pages 43-50 which is the pictorial titled 'Sparring Partners'. This pictorial consists of a series of photographs of two adult females, Karina and Eufat. These photographs include: on page 44 one woman with her tongue on the other woman's right nipple, on page 45 one woman kneeling in front of the other apparently undoing the bikini bottom of the other woman, on pages 46-47 one woman kissing the back of the other now nude woman who is posed in a rear facing position on elbows and knees, page 48 with one woman holding the other woman's left breast and placing her mouth close to (but not touching) the breast, page 49 two women nude stand with their bodies touching each other, depicting their tongues touching and one woman's hand apparently brushing the other woman's breast, and page 50 with the two women nude standing opposite each other with the pubic area of one woman visible.

The Review Board considered that these images discreetly imply sexual activity involving consenting adults which is not high in impact.

According to the Publications Guidelines, this content would be permitted in the Unrestricted Category.

(b) Nudity –

The Review Board considered that the images referred to above contain a variety of breast nudity, rear below waist visuals, and images in which both women are clearly

nude. The Review Board considered that these are realistic depictions of sexual nudity but that they are not high in impact, and there is, at most discreet, genital detail.

According to the Publications Guidelines, this content would be permitted in the Unrestricted Category.

(c) Adult themes -

According to the Publications Guidelines, the Issue contains content that would be permitted in the Unrestricted Category.

8. Reasons for the decision

The Review Board is of the opinion that the May 2013 issue of *Australian Penthouse*, which is covered by the serial declaration number 25640 does not contain material that, if the issue were being classified separately, would cause it to be classified with a higher classification than the original issue, which was classified *Unrestricted*.

Therefore the serial classification (declaration number 25640) is not revoked.

9. Summary

The review Board decided that the serial classification (declaration number 25640) of *Australian Penthouse* is not revoked.