



# Australian Government

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## Classification Review Board

**Date:** 19 April 2025

**Applicant:** Bernard Gaynor

**Business:** To review the Classification Board's decision to classify the publication *Gender Queer*, **Unrestricted (M – Not recommended for readers under 15 years)**.

## Decision and reasons for decision

### 1. Decision

The Classification Review Board classified the publication *Gender Queer* **Unrestricted** with the consumer advice '(M - Not recommended for readers under 15 years)'.

### 2. Legislative provisions

The Classification Act governs the classification of publications and the review of classification decisions.

#### The Review Board

Part 5 of the Classification Act outlines the provisions relevant to the Review Board and its procedures.

Section 42 of the Classification Act sets out the persons who may apply for review of a decision:

- a) the Minister
- b) the applicant for classification of the publication, or the likely classification of the publication under section 33
- c) the publisher of the publication, or
- d) a person aggrieved by the decision.

Section 43 sets out the conditions regarding the manner and form of applications for review, including time limits. Under section 44, the Review Board must deal with an application for review in the same way that the Classification Board deals with an application for classification of a

publication.

## Classification of publications under the Classification Act

Section 9, subject to section 9A, provides that publications are to be classified in accordance with the National Classification Code (the Code) and the classification guidelines. Section 9A states that a publication that advocates the doing of a terrorist act must be classified RC. Section 11 of the Classification Act requires that the matters to be taken into account in making a decision on the classification of a publication include the:

- a) standards of morality, decency and propriety generally accepted by reasonable adults, and
- b) literary, artistic or educational merit (if any) of the publication, and
- c) general character of the publication, including whether it is of a medical, legal or scientific character, and
- d) persons or class of persons to or amongst whom it is published or is intended or likely to be published.

## The National Classification Code

Relevantly, the Publications Table of the National Classification Code (the Code) provides that:

Publications (except RC publications, Category 2 restricted publications, and Category 1 restricted publications) **are to be classified Unrestricted**, and the Code also sets out various principles to which classification decisions should give effect, as far as possible:

- a) adults should be able to read, hear, see and play 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
- 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.

## The Guidelines

Three essential principles underlie the use of the *Guidelines for the Classification of Publications 2005* (the Guidelines), determined under section 12 of the Classification Act, the:

importance of context

assessment of impact, and

the six classifiable elements—themes, violence, sex, language, drug use and nudity.

### 3. Procedure

The publication, *Gender Queer* was classified by the Classification Board on 3 April 2023 **Unrestricted** with consumer advice of '**M – Not recommended for readers under 15 years**'.

An application for a review was lodged by the Applicant, Mr Bernard Gaynor, on 5 May 2023. The Classification Review Board (CRB1) met on 29 May 2023 and finalised their decision on 5 July 2023. The CRB1 upheld the original **Unrestricted** classification of the Classification Board, with the same consumer advice, '**M - Not recommended for readers under 15 years**'.

The Applicant applied for judicial review of the decision to the Federal Court of Australia and a decision was made on 14 October 2024 by Justice Jackman to quash the CRB's original decision, and an order of mandamus was made returning the publication to the Classification Review Board to conduct a fresh review.

A newly convened panel of three members of the Classification Review Board (CRB2) met on 23 January 2025 to review the publication. There are no conflicts of interest noted by the members of the CRB2 panel. None of the members of CRB2 were part of the CRB1 panel.

The CRB2 was provided with a written submission from the Applicant dated 17 January 2025, with annexures A-J. In the Applicant's written submission he sought the opportunity to provide oral submissions in relation to the fresh review decision, noting that CRB1 had received oral submissions from both the Applicant and other interested parties. The Applicant stated that the failure to accept oral submissions would deny the CRB2 the benefit of asking the Applicant questions about the content of the publication and without the benefit of his previous oral submissions made in May 2023.

The CRB2 considered whether it is necessary or appropriate for oral submissions to be provided, noting that there is no statutory requirement for oral submissions to be invited. In circumstances where the CRB2 has detailed written submissions from the Applicant and other interested parties, the CRB2 decided that the issues were well understood and oral submissions would not be of further assistance. The CRB2 further considered that the Applicant has had a sufficient opportunity to be heard in relation to his application. The Applicant was informed that oral submissions would not be invited, and was invited to provide any information in writing, which he has done.

The CRB2 was provided with a copy of the Federal Court decision, *Gaynor v Minister for Communications* [2024] FCA 1186.

The CRB2 was provided with written submissions from interested parties who had made submissions to CRB1. The Applicant also noted in his submission that he relied on these public submissions in full. The CRB2 considered whether it is necessary or appropriate to invite further public submissions, given the time that has passed since the CRB1 decision. In circumstances where the CRB2 has a large number of public submissions already provided, and there is no statutory requirement to invite public submissions for this review, the CRB2 decided that the issues were well understood and further public submissions would not be of further assistance.

The CRB2 read the publication.

The CRB2 then considered the matter.

## 4. Evidence and other material taken into account

In reaching its decision, the Review Board considered the following:

- (i) The publication, *Gender Queer* by Maia Kobabe
- (ii) The relevant provisions in the Classification Act, the Code and the Guidelines
- (iii) Mr Bernard Gaynor's application for review
- (iv) Mr Bernard Gaynor's two written submissions including 9 attachments (including the submission by Associate Professor Lesley-anne Ey)
- (v) The written submissions from The Australian Library and Information Association (ALIA)
- (vi) The written submissions from members of the public
- (vii) The Classification Board's report dated 3 April 2023
- (viii) The Classification Review Board's report dated 5 July 2023
- (ix) The Federal Court decision, *Gaynor v Minister for Communications* [2024] FCA 1168.

## 5. Synopsis

*Gender Queer* is an autobiographical graphic novel by Maia Kobabe, published in 2020 by Oni-Lion Forge Publishing Group. This 240-page memoir chronicles the author's journey of self-discovery, focusing on their exploration of gender identity and sexuality. Throughout the novel, Kobabe reflects on their experiences growing up, particularly during adolescence, and the challenges they faced in understanding their identity within the context of their relationships with family, friends, and society.

The graphic novel delves into the author's evolving sense of self as a non-binary and asexual individual. Kobabe navigates the complexities of societal expectations surrounding gender, offering a candid and often humorous portrayal of their discomfort with traditional gender roles. The memoir is not just a recounting of experiences, but also an insightful exploration of how these personal revelations intersect with the broader cultural and social understandings of gender and sexuality.

The graphic novel further examines the author's relationship with their family, particularly the challenges and misunderstandings that arise as they attempt to explain their non-binary identity. These familial interactions provide a key emotional backdrop for the narrative, highlighting the difficulties of reconciling one's internal sense of self with external expectations. Through these reflections, *Gender Queer* offers a profound meditation on identity, acceptance, and the complex nature of self-expression.

This additional context is important to understanding the publication's broader themes, helping to establish the narrative and intellectual framework within which the more sensitive topics, such as gender and sexuality, are explored. The CRB2 considered this context in making its findings on material questions of fact as set out below.

## 6. Findings on material questions of fact

## The front and rear covers

The CRB2 found that the front and rear covers of the publication were suitable for public display.

## The publication

The CRB2 found that the publication contains the following classifiable elements (listed in order of impact):

(a) Sex — The publication contains descriptions and depictions (in the form of illustrations) of sexual activity. These descriptions and depictions are justified by context. The impact of these descriptions and depictions is not so strong as to require legal restriction. The impact is mitigated by factors including:

- Descriptions and depictions of sexual activity are an integral part of the author's story of the struggle to understand the author's gender identity and sexuality.
- Descriptions and depictions of sex are highly stylised and contain little or no realistic detail.
- Descriptions and depictions of sex are not exploitative or gratuitous.
- Descriptions and depictions of sex are infrequent in the context of the publication as a whole.

(b) Nudity — the publication contains infrequent, highly stylised depictions of male and female nudity, including full-frontal nudity. These illustrations are lacking in detail and are justified in context. The impact of the nudity is no higher than moderate and can be accommodated at the Unrestricted level.

(c) Themes — the publication is a first-person narrative about the experience of a non-binary and asexual person growing up, and explores complex themes including gender, sexuality, identity, puberty, and relationships. The impact of these themes is no higher than moderate and can be accommodated at the Unrestricted level.

(d) Language — the publication contains very infrequent coarse language which is justified by context. The impact of this language is no higher than moderate and can be accommodated at the Unrestricted level.

(e) Drug Use — the publication contains a depiction showing a person injecting what is identified as testosterone, and some stylised images of syringes, as well as references to prescription medications accompanied by stylised images of medication containers. The impact of the depiction of drug use and the drug references is no higher than moderate, and can be accommodated at the Unrestricted level.

(b) Violence — The publication contains no violence.

## 7. The applications and submissions by Mr Gaynor

The Applicant provided a submission to the CRB2 on 20 January 2025, which annexed:

A. The Applicant's original application for review of *Gender Queer* lodged 5 May 2023

B. Public submissions lodged in relation to *Gender Queer*

C. CRB biography

D. 'There were calls for this queer book to be banned, but supporters may have saved it' published by the SBS on 22 June 2023

E. 'Qld police 'reluctant to get involved' in campaign to ban book' published by the Brisbane Times on 18 June 2022

F. Letter from Dr Lesley-anne Ey dated 3 May 2023

G. Brief in Support of Motion to Dismiss, filed by Maia Kobabe on 26 July 2022

H. Maia Kobabe's Reply Brief, filed on 17 August 2022

I. Screenshot of home page of [kink.com](https://www.kink.com) captured on 20 February 2023

J. 'What to Do When Your Kid Is Reading a Book That Makes You Uncomfortable' published by Slate.com on 22 March 2022

In his submission to the CRB2 on 20 January 2025, the Applicant stated that, the decisions by the ACB and CRB1 to give *Gender Queer* an 'Unrestricted' rating failed to apply the Act, Code or Guidelines given 'this publication indisputably contains a depiction of a minor engaged in a sex act with an adult.' The Applicant focused in particular on page 135 of *Gender Queer*, submitting that this involved a depiction of a 'paedophilia fantasy'.

He argued that the publication should be Refused Classification because it 'breaches the standards of morality, decency and propriety generally accepted by reasonable adults, not just because it depicts a minor engaged in a sex act with an adult but, more importantly, does so in a manner which clearly suggests that it is positive and acceptable to fantasise about such content...'. The Applicant submitted that, contrary to the CRB1 decision conclusion that the autobiography indicated the author's 'anathema to sex and masturbation', the Applicant submitted that the novel demonstrates the author's 'complete obsession with these matters, as well as bodily secretions'.

In addition, the Applicant stated, 'Putting aside the sexualised content of *Gender Queer*, the remainder of this publication is likely to cause significant harm and confusion particularly to girls going through puberty who may be anxious or nervous about the bodily changes they face.'

The Applicant also stated that the publication 'has a link to a website that focuses on public degradation and humiliation is alarming and an additional and separate reason that his publication is not suitable for minors. Under the Act, Code and Guidelines, this should see the publication given a Restricted rating.' The Applicant stated that the reference was a 'clear invitation' to readers to access the website.

The Applicant cited the public submissions received by the CRB which 'highlight the enormous public concern specifically about this publication.'

In the Applicant's first application to the CRB1 (date not included), in addition to some of the points made above, he submitted that the publication contains: nudity which is high in impact 'because of... emphasis, tone and context' including because of depictions involving the author's menstrual blood; high impact violence ('the author being stabbed through by a giant metal pole while naked on pages 128 and 129'); depictions and descriptions of sexual activity that are high in impact and intensity and 'likely to be offensive to reasonable adults' and includes 'depictions which constitute a fetish or a

depiction and description of a revolting or abhorrent phenomena' warranting a Category 2 Restricted classification.'

The Applicant also stated that the publication contains two depictions which promote crime: the depiction on page 135; and the depiction on page 61 showing 'the author masturbating while driving'.

## 8. Public submissions

The Classification Review Board is not required by the Classification Act to invite public submissions, or take public submissions into consideration; however, CRB1 invited and considered public submissions. The Applicant also requested that the CRB2 consider those submissions, and the CRB2 has done so.

The CRB2 panel considered all of the approximately 526 public submissions made by email (including approximately 82 identical petition submissions each with 100 names, sent by email from 'CitizenGo' as 1 submission by email). The public submissions are approximately 837 pages in length, and the CRB2 has read all of the submissions.

The significant majority of submissions wanted the publication to be Refused Classification or restricted from minors, citing concerns about paedophilia, homosexuality, pornography, masturbation, oral sex and other sexually explicit content, and LGBTQIA+ issues. Many of these submissions expressed concern about the book being available in the children's section of public libraries. The CRB2 noted that the Federal Court described the 'dominant theme' of the submissions as being that 'the book tolerates or promotes paedophilia, and that such a stance is against the criminal law in Australia and is morally repugnant'. Some of the submissions raised the following three main concerns (either in exact wording, or variations):

- *This book disturbingly depicts its author fantasising about paedophilia while masturbating.*
- *This book contains highly offensive images of the author engaged in oral sex.*
- *This book is offensive to reasonable adults and completely inappropriate for minors.*

The CRB2 noted that the above dot points appeared to have been proposed by the Applicant to his email subscribers. One of the public submissions included a forwarded copy of an email from Mr Gaynor to his subscribers which said:

*Last week I wrote to let you know that I had challenged the approval of the disgusting, pro-paedophilia children's book, Gender Queer.*

*The Classification Review Board is now considering that challenge and taking public submissions. They can be lodged up until midnight this Friday.*

*This means we only have a few days to act. So we must act now!*

*Lodging a submission is easy. Simply email the Classification Review Board at [crb@classification.gov.au](mailto:crb@classification.gov.au) and outline your views about Gender Queer.*

*Some points that you may wish to make to the Classification Review Board about this book (in your own words) are:*

- *This book disturbingly depicts its author fantasising about paedophilia while masturbating.*
- *This book contains highly offensive images of the author engaged in oral sex.*
- *This book is offensive to reasonable adults and completely inappropriate for minors.*

*You can see some of the redacted imagery from Gender Queer here.*

The 82 'petition' submissions organised by CitizenGo appear to have been arranged by a petition commenced on the CitizenGo platform that remains available online at <https://citizengo.org/en-au/fm/210974-ban-paedophile-comic-book>. The petition invites persons to enter their email address to 'sign' a petition and send the following email to the CRB:

*Dear Australian Classification Review Board, I am writing to express my concern about the book Gender Queer and its potential impact on children. The book contains an image of an adult man engaging in a sexual act with a child, which is essentially child pornography. This type of material should not only be restricted from children, but should be illegal. I strongly urge you to restrict this book from children and take the necessary steps to protect them from such disturbing material. Thank you for your time and consideration. Sincerely,*

The petition webpage included an excerpt of page 135 of the novel, and invited signatures with the following description:

*Gender Queer, a comic book that promotes explicit sexual content and gender confusion, has been classified as suitable for children as young as 15. What's worse is that it's available in public libraries, and quite possibly in schools for children of all ages to get their hands on. This book contains a graphic depiction of a sexual act between an adult male and a boy or, in other words, child pornography. This is unacceptable. **You must take URGENT action right now as there is a very short window in which we can get this book banned.** The Classification Review Board has opened a very short submission period, closing this Friday, 26 May 2023, to reconsider the classification of this book. We urge you to sign our petition to the Classification Review Board and demand that Gender Queer be reclassified as unsuitable for children. Children are vulnerable and should not be exposed to harmful content that can negatively impact their mental and emotional well-being. Help us protect them by signing the petition today. Time is running out. **The submission period closes this Friday, 26 May 2023. Don't wait until it's too late. Sign the petition now and make your voice heard.***

An 'update' posted to the webpage after the closing date for public submissions states 'Together, we sent a powerful message to the Australian Classification Review Board (ACRB) that Australians won't tolerate materials that confuse our youth about their gender identity and expose them to graphic content involving an adult male and a boy'.

Submissions advocating for the book to remain Unrestricted cited its value as an educational resource, reducing prejudice and increasing empathy and understanding. Some of these submissions also noted the book's literary and artistic merit, noting a lack of representation of stories of intersectional identities.

The Applicant cites the public submissions as evidence of the public's concern with the content of the publication. However the CRB2 notes that approximately 50 of the submissions appeared to have cut-and-pasted their concerns from an email soliciting submissions sent by the Applicant (which was contained in one of the submissions as described above). Many other submissions appear to have been written in response to the Applicant's prompt which referred to 'some of the redacted imagery' from the novel, some stating that they had not seen the text, or not seen all of the text. Similarly,



while the CitizenGo petition was ‘signed’ by thousands of people, this does not demonstrate that each of those persons has seen the text, or all of the text, other than the image at p135. Any person visiting that webpage would have been provided with the description of the novel provided by CitizenGo and the depiction on page 135 of the novel, and they may not have appreciated the full context of the publication. The CRB2 acknowledges that these submissions reflect the views of these members of the public. It cannot however be assumed that this cohort is representative of the broader community’s views.

## 9. Other submissions

In addition to written submissions from members of the public, the CRB2 also considered submissions to the first review from the Australian Library and Information Association (ALIA) and Associate Professor Lesley-anne Ey (provided by the Applicant).

The CRB2 noted that the CRB1 received written *and* oral submissions from ALIA in favour of an Unrestricted classification. The CRB2 considered only the written submission, as discussed earlier in these reasons. The CRB2 notes ALIA’s submission that restricting the publication denies access to affirming materials for vulnerable members of the community who are non-binary, transgender, and/or asexual, many of whom are subject to prejudice and at risk of self-harm and suicide.

The submission by Associate Professor Lesley-anne Ey, a lecturer in Educational Psychology and Child Protection in Education Futures at the University of South Australia, concerns the age of figures in a depiction on page 135 of the publication, and a ‘moral dilemma’ of a sexual relationship between a teacher and a student. This depiction is discussed in more detail in the reasons below.

## 10. Reasons for the decision

### Sex

#### **The depiction of a fantasy based on Plato’s *Symposium***

The Applicant’s second submission to the Classification Review Board states that *Gender Queer* depicts a paedophilia fantasy and that the publication ‘breaches the standards of morality, decency and propriety general accepted by reasonable adults, not just because it depicts a minor engaged in a sex act with an adult but, more importantly, does so in a manner which clearly suggests that it is positive and acceptable to fantasise about such conduct and that *Gender Queer* should be Refused Classification’. The Applicant’s first submission also focused significantly on this depiction, submitting that a reasonable adult would form the view that the image depicts the author sexually aroused by a fantasy of a man engaged in sexual activity with a boy and that the author is sexually aroused and masturbates to the thought of paedophilia.

#### *The depiction and its context in the publication*

The applicant refers to a depiction on page 135 of the publication.

The panel, the lower of two panels on the page, is a colour illustration which depicts the author lying down, fully clothed, eyes closed, with arms resting across the belly. The face is slightly flushed, represented by red lines on the cheek. A thought bubble appears alongside. The bubble contains a

depiction of two nude males, one is bearded and significantly larger than the other. The larger male kneels in front of the smaller male, his right hand cupped below the smaller male's penis. The larger male has an erection. The image in the thought bubble is stylised to look like ancient Greek red-figure pottery - the males are drawn as pale figures against a dark background, inside a circle surrounded by a geometric pattern. The Classification Board, CRB1 and the Applicant have identified this illustration as a reference to a work of pottery art attributed to the Brygos painter, dated around 4th BC Athens. A caption inside the panel identifies the thought bubble with an arrow as 'An elaborate fantasy based on Plato's Symposium.' A caption above the panel says, 'I discovered it (masturbation) at around the same age, followed by the further realization that my ability to become aroused was governed by a strict law of diminishing returns.' A caption below the panel says, 'The more I had to interact with my genitals the less likely I was to reach a point of any satisfaction. The best fantasy was one that didn't require any physical touch at all.'

The panel above this depicts the author seated at a writing desk, implicitly writing. A caption above the panel says 'Alison Bechdel writes in Fun Home about discovering masturbation soon after her first period (page 170).' A caption box inside the panel says 'I didn't know then that there was a word for the oddly gratifying motion of rocking back and forth in my chair as I drew at my desk.'

This page is part of a sequence, from page 134 to page 141, that deals with the author's growing realisation that they are asexual, charting their confusion by, and ultimate dissatisfaction with, masturbation.

The style of the author's illustrations throughout the publication are simple and direct, closer to a cartoon than reality. The depiction on page 135 is further stylised by its presentation as an image from ancient Greek pottery.

#### *The age of the figures in the panel*

The Applicant states that the panel depicts the author 'fantasising about an adult male fondling the genitalia of a minor' and says the evidence for this can be found in: the detail of the imagery; the assessment of the imagery by Dr Lesley-anne Ey; the reference to Plato's Symposium in the text associated with the image; the style of the image which mimics ancient Greek artworks depicting sexual activity between adult males and minors; and Maia Kobabe's admissions that the image depicts a minor engaged in a sex act.

The Applicant also states that, 'There are actually two minors depicted engaged in sexual acts in the image above... The first is the image of Maia Kobabe herself and the second is the male figure depicted at the right of her masturbatory fantasy'.

The image of the ancient Greeks depicts two figures. One larger and bearded, the other is smaller and lacks facial hair, though appears to have some pubic hair. The submission by Dr Lesley-Anne Ey asserts that the smaller figure is 'a child aged approximately 12 years' based on the figure's size and indicators of development.' Dr Ey's assessment has been taken into account by the CRB2, however, the CRB2 considers it is not possible to conclusively determine the age of the larger or smaller figures because of the highly stylised nature of the illustration which lacks significant detail.

The context of the image - the visual reference to pottery art attributed to the Brygos painter, and the textual reference to Plato's Symposium - suggests that the image references the ancient Greek practice of pederasty, or sexual activity between adult males and teenage boys. It is noted that these references require some cultural knowledge to decode or fully understand this context,.

The Applicant cites a line contained in a legal brief for an American court proceeding from 2022 (Virginia: In The Circuit Court of the City of Virginia Beach in re: *Gender Queer, a Memoir* - Brief in Support of Motion to Dismiss. Supplied by the Applicant) 'The only image of the book of nudity or a sexual act indisputably involving a minor depicts a scene from Plato's Symposium on an ancient Greek vase.' The Applicant states that this is a 'factual admission' and suggests this is decisive. The CRB2 notes that the full paragraph reads, 'Altman erroneously asserts that Kobabe's work depicts 'felonious sexual acts between minors.' The only image in the book of nudity or a sexual act indisputably involving a minor depicts a scene from Plato's Symposium (p.135 of the book) on an ancient Greek vase. This classical theme is common in works of philosophy, history, and art of that era.'

In the CRB2's view, it is not possible to conclusively determine the age of either of the figures because of the highly stylised nature of the illustration. While the CRB2 acknowledges the opinion of Dr Ey, the CRB2 considers that analysis of size and 'indicators of development' of the figures is unhelpful taking into account the highly stylised nature of the illustration. Further, the text contains no description of the two figures to identify the figures or their ages. The most that can accurately be said is that the panel contains a depiction of an older-looking male and a younger-looking male. For these reasons, on balance, the CRB2 does not accept that the image depicts, or appears to depict, an adult and a minor.

The CRB2 also considered the age of the author figure in the panel. The figure is highly stylised with minimal detail, and the figure is clothed, making it difficult to ascertain the age. However, the CRB2 notes that the figure is depicted with long hair, and that the author's hair was cut short at age 16, as described on pages 78-81 of the publication. The age of the author figure may only be inferred from context.

The Applicant also described this panel as containing depictions of the author's 'fetish... avoiding sexual touch of her genitalia'. The CRB2 disagrees with the characterisation of this as a fetish.

#### *A teacher and student?*

The submission by Dr Ey states that the image depicts 'a sexual encounter between an ancient Greek scholar and his student'. She observes the moral dilemma of a sexual relationship between teacher and student, the codes of practice which apply and the power differential involved in such a relationship. The Classification Board also made an observation that the image likely depicts a sexual encounter between a Greek Scholar and his student. The CRB1 did not address this issue.

The submission by Dr Ey stated that the image depicts 'a sexual encounter between an ancient Greek scholar and his student'. The Classification Board agreed with this view. The CRB1 did not address this issue.

The CRB2 acknowledges that, in Australia, relationships between teachers and students are prohibited if the student is a minor. As Dr Ey notes, even if the participants are adults, such relationships pose a moral dilemma because of the power differential between a teacher and a student, and the inherent conflict of interest. However, the CRB2 does not agree that the image depicts 'a sexual encounter between an ancient Greek scholar and his student' and considers this assertion to be conjecture not supported by the image.

#### *Should the depiction require the publication to be Refused Classification?*

The National Classification Code (the Code) provides that publications that 'describe, depict, express or otherwise deal with matters of sex... 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' should be given an RC classification. The Code also states that publications that 'describe, 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)' should be given an RC classification.

For the reasons explained above, the CRB2 is not satisfied that the panel of p 135 depicts a person who is, or appears to be, a child under 18.

Even if one accepts the context provided by the reference to Plato's Symposium and the statement contained in US court proceedings, to conclude that the depiction appears to depict a person who is, or appears to be, a child under 18, the impact of the stylised illustration remains moderate. As outlined above, the CRB2 finds that the panel on page 135 does not depict sexual activity in a detailed or realistic manner. The illustration is highly stylised and not explicit. The ages of the characters cannot be definitively determined from the depiction alone, and could only be inferred from the broader context. These factors significantly reduce the impact of the image.

The impact of the image is further reduced by the fact it mimics an ancient Greek vase.

The context in which this image appears - in a broader narrative exploring the author's personal journey of self-discovery, further mitigates its impact. *Gender Queer* explores Maia Kobabe's personal journey of self-discovery, focusing on themes of gender identity and asexuality. One of the significant elements of this narrative is the author's exploration of the nuances of sexual identity, which includes reflections on masturbation and an eventual realisation about being asexual. These themes are a central aspect of the memoir's coming-of-age narrative, as a reflection of Kobabe's experiences in a positive, introspective light, exploring the complex feelings of confusion, discomfort, and eventually acceptance.

The CRB2 disagrees with the Applicant's statement that the image is 'a very modern and paedophilic fantasy of the author which simply mimics this style (of ancient Greek pottery) without any historical or other contextual justification'. The reference to the ancient Greeks is one of a number of cultural images the author uses in the search for representations of gender and sexuality to help them make sense of their own experience, for example: on page 30 the author writes, 'My favourite fictional character at this time was Alanna the Lioness - a short, stubborn girl who disguised herself as a boy to train as a knight'; the music of David Bowie 'was the first time I could ever remember hearing queer references in song lyrics.' (page 58); at the library they discover queer books including the *Fake Series* books by Sanami Matoh and *The Last Herald Mage Trilogy* by Mercedes Lackey (page 75); and on page 87 they discover Oscar Wilde on a theatre trip. As the author's story makes clear, they struggle to find representations of intersectional identities and sexuality.

While the Symposium reference serves as a cultural touchstone in the author's search for representations of gender and sexuality, it is not presented as an endorsement or promotion of the historical practices depicted in such artworks. The CRB2 finds that the image is appropriately contextualised within the author's narrative and cultural references.

The Applicant raised concerns about the age of Maia Kobabe in the illustration. As noted above, the age of the author figure is difficult to ascertain from the illustration itself and may only be inferred from context. Even accepting that the character may be 16, in the CRB2's view, the depiction is justified in the context of the broader narrative, which conveys the complexity of the author's

thoughts and feelings about sexuality in a non-exploitative way. The CRB2 also notes that the author is drawn fully clothed, in a non-sexualised pose, further mitigating the impact.

In response to the Applicant's assertion that the depiction might promote criminal behaviour, it is essential to clarify that the narrative does not glorify or endorse illegal activities. The CRB2 concurs with the Classification Board's findings that the content of the publication, including the depiction in question, is not intended to incite or promote criminal actions. Rather than promoting or glamourising paedophilia or inappropriate sexual conduct, the panel on page 135 is part of a broader narrative about the author's growing understanding of their asexuality.

The CRB2 notes that the Guidelines define a reasonable adult as 'possessing common sense and an open mind, and able to balance personal opinion with generally accepted community standards.' This definition emphasises that a reasonable adult is expected to assess content thoughtfully, with an open mind, and in a way that reflects a balanced understanding of the material.

While the CRB2 acknowledges that the publication may create some discomfort for some readers, we find that the illustration does not describe, depict, express or otherwise deal with matters of sex in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that the publication should not be classified. Nor does it 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.

The CRB2 finds that the narrative surrounding the illustration on page 135, and its placement within the broader themes of the publication, justifies the *Gender Queer* graphic novel's classification as Unrestricted with the consumer advice of "M – Not recommended for readers under 15 years."

### **Other descriptions and depictions of sexual activity**

The Applicant submitted that the publication contains descriptions and depictions of sexual activity that offend against the standards of morality, decency or propriety such that the publication should be Refused Classification or Restricted. Some of the examples cited by the Applicant include:

Also on page 60 the author describes fantasising about having a penis. On page 60 the author describes across three panels experiences of masturbating. In the first panel an illustration shows a hand on the crotch of a pair of jeans. Text says, 'For years my standard method of masturbation was stuffing a sock into the front of my pants and manipulating the bulge.' The second panel contains an illustration of two males kissing. The males are implicitly naked, one lying atop the other, the top of his bare buttocks visible. Text says, 'This would evolve into hip thrusting while thinking of my latest gay ship...' The Applicant states that these characters appear to be minors but the illustrations do not contain enough detail to conclusively state their age. The CRB2 is satisfied that the illustrations do not involve minors. The third and final panel shows the author sitting in the driver's seat, one hand in their crotch, the other on the steering wheel. Text says, 'Memorably, I got off once while driving just by rubbing the front of my jeans and imagining getting a blow job. I promise I'm a really safe driver.' The author is fully clothed in this panel. The CRB2 rejects the Applicant's assertion that this behaviour constitutes a fetish.

Pages 62 and 63 depict a conversation with the author's sister about masturbation in which the author's sister says, 'It really never occurred to you to put something into your vagina, not even a finger?' and 'So you've never tasted yourself?' The author responds, 'What? No! Ew!' But after the sister says, 'You should try.' The author is depicted with white substance on one finger. A text arrow

describes it as 'vagina slime'. The author refers to not being able to taste it. The CRB2 rejects the Applicant's description of this experimentation as a 'fetish or revolting or abhorrent phenomena. The CRB2 considered that these passages are justified by their context and include an honest account of the author's personal experience.

On page 93 the author recounts several masculine dreams including a dream 'about having a massive painful boner that lasted all day'. This is depicted as a bulge in the author's boxer shorts.

On page 117 the author is surprised when a friend says she likes lesbian porn. The friend says, 'I think it's because - I just don't know how to assign a sensation to a body part that I don't have.' In the next panel the author says, 'I assign sensation to a body part I don't have all the time. Sometimes I can almost feel where it would be resting against my thigh.' The illustration shows the author sleeping in a T-shirt and underpants. The image contains no depictions of genitals. The Applicant again describes this as a 'fetish' of fantasising about having male genitalia. The CRB2 does not accept the Applicant's description as a 'fetish'.

Pages 134 to page 141 deals with the author's growing realisation that they are asexual, charting their confusion by and ultimate dissatisfaction with masturbation. It includes the Plato's Symposium panel considered above, as well as references to a calendar of abstinence/masturbation, and speculation that the author's body operated on 'a seasonal sexual cycle like a bird'. On page 138 the author describes discovering reference to a '\$10 bullet vibrator' in a comic. The page includes an illustration of the vibrator which resembles an egg on a cord. The author says they purchased a vibrator and, on page 140, attempts to use it before deciding that they don't enjoy it. This is illustrated by a series of panels of the author's head and shoulders, while implicitly using the vibrator. The sequence concludes with the author giving the vibrator to their sister.

From page 154 to 156 the author searches for someone to kiss, in order to write more accurately about kissing and refers to One Direction fan fiction. In a thought bubble on page 154 the author says 'In my story all of the 1D boys are lusting after each other and it is destroying their friendships.' This 'research' sequence also includes a panel on page 157 with an illustration of a building and text that says, 'Toured the SF Armory, which at the time housed the filming studios of kink.com.'

The Applicant submits that this is 'a link to a website that focuses on public degradation and humiliation' and is 'an additional and separate reason that this publication is not suitable for minors.' The CRB2 notes the reference to the website is not a 'link' as characterised by the Applicant - the website cannot be accessed from the graphic novel. Nor is it, as the Applicant states, 'a clear invitation to readers to access this website'. The panel contains no description or depiction of the contents of the website.

The Guidelines provide that Unrestricted publications may contain descriptions and depictions of sexual products and services that are restricted to adults but these should be discreet and have a low impact. In the CRB2's view this passing reference to an adult website in a non-sexual context is discreet and has a low impact, and can therefore be accommodated in the Unrestricted category.

The impact of these pages concerning the author's 'research' is mitigated by the lack of detail to the sexual references.

Pages 160 to 168 recount the author's experience with Z, who they meet through Tinder. On pages 167 and 168 the author describes sexting and depicts an encounter in which Z fellates a strap-on, worn by the author. A panel on page 167 depicts Z fellating what appears to be a penis - from the standing author's point of view. Text says, 'This is the visual I'd been picturing.' In the second panel a

wider view shows Z fellating a strap-on worn by the author. Text says, 'But I can't feel anything. This was much hotter when it was only in my imagination.' The two characters are clearly established as consenting adults.

The descriptions and depictions of sexual activity are relatively visually discreet. The impact is significantly mitigated by the simple, stylised illustrations and lack of detail. They are justified in the context of the narrative, concerning the author's exploration of their sexuality. As the submission by a Senior Lecturer in Writing at the University of Technology Sydney notes, 'Unlike pornography where sex is often depicted as occurring in a vacuum and without consequences, *Gender Queer* sensitively depicts intimate relationships and sexual desire (between consenting adults) as complex and entangled in questions of gender, identity, and our responsibilities to ourselves and other people.'

The CRB2 has read the novel in full and considered all of the descriptions and depictions of sexual activity and considering them individually and as a whole, the impact is no higher than moderate and can be accommodated at the Unrestricted level.

## Nudity

In Mr Gaynor's first application to CRB1 (date not included) he submitted that the publication contains: nudity which is high in impact 'because of... emphasis, tone and context'. He submitted that the publication contained frequent depictions of nudity, citing depictions of nudity on pages 13, 20-22, 29, 31, 35, 36, 124, 128-129, 212 and 213.

The CRB2 read the publication and considered depictions of nudity.

Page 13 depicts two young children implicitly urinating in the yard with bare buttocks visible.

Pages 20-22 depict a scene in which the pre-pubescent author is teased by fellow students for swimming topless at a beach. The author has not developed breasts and appears flat chested. The scene illustrates their confusion at being told to put a top on.

Page 124 includes a small panel depicting full frontal female nudity as the author undresses for a medical examination. The image includes breast nudity and pubic hair but does not contain any genital detail.

Page 128 and 129 depict the naked author stabbed through the belly with a giant pin, representing the excruciating pain they felt undergoing an internal examination. The full page panel on page 128 includes a glimpse of pubic hair. The image contains no breast nudity or genital detail. A second, smaller image on page 129 shows buttocks nudity. These panels are discussed in more detail in the consideration of themes below.

A panel on page 213 depicts the author bare chested after imagined top surgery, without breasts. Arguably this doesn't depict any nudity beyond a bare male chest.

Some of the depictions cited by the complainant contain no nudity, for example: the panel cited on page 29 depicts the author's thighs and knees, looking at a blood spot on what appears to be the author's underwear.; the panel cited on page 31 depicts a side view of the author sitting on the toilet with no nudity; pages 35 and 36 depict the author's nightmares about menstruation, showing bloody legs and a bloody crotch but no nudity; page 212 depicts the author's struggle to wear a binder, with one panel showing the author with an itchy back and scratching, with the chest completely covered by the arms.

The nudity is not frequent in the context of a 240 page graphic novel. The nudity is not detailed. The highly stylised illustration significantly mitigates its impact. Excepting the panel of Plato's Symposium on page 135 discussed above, the nudity does not occur in a sexual context. The depictions are justified in the context within which they are presented.

The CRB2 finds that the impact of the nudity is not, as the Applicant submits, 'aggravated by accompanying text and other imagery'. The impact of the nudity is no higher than moderate and can be accommodated at the Unrestricted level. Depictions of nudity are not likely to cause offence to a reasonable adult.

## Themes

*Gender Queer* is an autobiographical narrative which recounts Maia Kobabe's experience growing up, and the author's exploration of gender identity and sexuality.

The publication explores a number of complex issues including gender, sexuality, identity, puberty, and relationships - elements commonly addressed in coming-of-age books. Examples include:

In a sequence from page 29 - 37 the publication depicts the author experiencing a period and the associated distress and the ongoing anxiety caused by menstruation for the author. Page 35 describes nightmares involving menstrual blood on the author's underwear and thighs. On the following page the author elaborates on their nightmare, finding themselves in a bathroom with no door or 'the only available toilet is overflowing with a soup of blood and shit'. The panel depicts a toilet bowl covered in blood and faeces. Though the image is not detailed, the depiction conveys the author's horror of their bodily functions.

The submission by ALIA notes that 'sensitive issues such as menstruation anxiety or masturbation are common experiences that many readers will relate to. It is refreshing to see them presented factually in the context of a character's growth and development'. The CRB2 agrees with this statement.

Another sequence dealing with anxiety the author's feminine body causes, occurs from page 123 to 131, depicting the author's first pap smear. The procedure is contextualised by a female doctor who tells the author that they are screening for cervical cancer and talks them through the process. Nonetheless, the author describes the procedure (which is not depicted) as '45 seconds of the most excruciating pain in my life'. This is represented on pages 128 and 129 as the author being run through with a giant pin. Text on page 128 says 'I felt as if I had been stabbed through my entire body and with this came a wave of psychological horror at the realization that things can go inside my body.' The depiction is surreal, with the exaggerated size of the pin suggesting the size of the author's pain. This is the strongest depiction of the author's distress.

The Applicant submitted, 'Putting aside the sexualised content of *Gender Queer*, the remainder of this publication is likely to cause significant harm and confusion particularly to girls going through puberty who may be anxious or nervous about the bodily changes they face.' The CRB2 disagrees with this assertion, finding that the author explores issues of gender and sexuality in a candid manner, modelling self-compassion, and ultimately finds peace with ambiguity.

The CRB2 considered the treatment and impact of these elements and finds that they are justified in the context of the narrative, and moderate in impact. The treatment of these complex themes can be accommodated at the Unrestricted level.



## Coarse language

The publication contains coarse language: two uses of 'shit', two uses of 'asshole' and one use of 'fuck'. On page 215 the author shows a thought bubble containing the word 'fuck', when a call is received about a papsmear exam. The coarse language is very infrequent. It is justified in the context of the narrative. The impact of this language is no higher than moderate and can be accommodated at the Unrestricted level.

## Drug Use

The publication contains a depiction showing a person injecting testosterone, and some stylised images of syringes on page 174, as well as a reference to the prescription medications Oxycodone and Lorazepam and a stylised drawing of the tablet containers on pages 222 and 223. In the context of the narrative, the impact of the depiction of drug use and the drug references is no higher than moderate, and can be accommodated at the Unrestricted level.

## Violence

As noted above, the CRB2 considers the images of the author stabbed through the belly with a giant pin on pages 128 and 129 are most appropriately considered to be thematic content. The publication contains no depictions of violence.

## Consumer advice warning

Unrestricted publications may include material that is not recommended for some readers. The CRB2 recognises that some of the elements may offend some sections of the adult community and may not be suitable for readers under 15. Therefore, it is appropriate to give the publication a consumer advice of 'M - Not recommended for readers under 15 years'.

## Promotion, incitement, or instruction in matters of crime

The Applicant submitted that the publication should be refused classification because it promotes matters of crime, citing the depiction of Plato's Symposium on page 135, and a depiction on page 61 that 'shows the author masturbating while driving'.

The CRB2 has reviewed both depictions above (under The depiction of a fantasy based on Plato's *Symposium* and Other Depictions and Description of Sexual Activity).

The CRB2 notes that merely describing or depicting something does not equate to promoting it. The depiction of the author's fantasy involving an ancient Greek scene does not promote paedophilia, as the Applicant asserts. The CRB2 does not accept that the image includes a depiction of paedophilia, or that it promotes paedophilia. Additionally, the scene depicting the author masturbating while

driving clearly states that it occurred “one time” and includes the author’s comment that they are a “really safe driver,” acknowledging the potential danger of such behaviour.

The CRB2 finds that the publication does not encourage or promote criminal activity, and disagrees with the Applicant’s claim that these behaviours are “likely to be emulated” by readers.

## Section 11 considerations

Section 11 of the Classification Act requires that the matters to be taken into account in making a decision on the classification of a publication include the:

- a) standards of morality, decency and propriety generally accepted by reasonable adults, and
- b) literary, artistic or educational merit (if any) of the publication, and
- c) general character of the publication, including whether it is of a medical, legal or scientific character, and
- d) persons or class of persons to or amongst whom it is published or is intended or likely to be published.

The Act requires the CRB2 to consider all these matters together, and that this may require weighing one consideration against another in the context of the publication as a whole - for example, Section 11 includes the ‘general character of the publication’ which cannot be gleaned from a single panel taken out of context.

The CRB2 has considered these matters together in the context of the publication as a whole.

*a) standards of morality, decency and propriety generally accepted by reasonable adults, and*

As the Applicant notes in his submission, the standards of morality, decency and propriety are ‘based on a plurality of standards held by reasonable adults and necessarily entails the ACB or CRB give consideration to these differing standards...’

The CRB2 again notes that the Guidelines describe a reasonable adult ‘possessing common sense and an open mind, and able to balance personal opinion with generally accepted community standards’.

The reasonable adult test requires a balanced, open-minded assessment, and the CRB2 has carefully considered the content within this framework, ensuring that the decision reflects a fair evaluation of the material, consistent with generally accepted community standards.

While the CRB2 acknowledges that the publication may create discomfort for some readers, we find that the publication does not offend against the standards of morality, decency and propriety generally accepted by reasonable adults. The CRB disagrees with the complainant’s assertion that the CRB2 need only find that the publication is likely to cause offence to a (singular) reasonable adult.

The CRB2 further notes that the Classification Branch has not received any complaints about *Gender Queer* from other peak Australian authorities such as the Australian Border Force.

CRB2 acknowledges ALIA's submission that the publication has been translated into Spanish, Polish, Czech, French, and Italian with Norwegian, Portuguese, German, Dutch, Japanese, and Korean forthcoming.

*b) literary, artistic or educational merit (if any) of the publication, and*

CRB2 notes the widespread recognition, critical reception, and acclaim that *Gender Queer* has received worldwide, including from ALIA, the peak body for libraries in Australia, who stated in their submission, 'Books such as *Gender Queer* which have a first-person narrative from a non-binary person play a particularly important role in reducing prejudice and increasing understanding... It is important to also acknowledge the support the novel *Gender Queer* can give to people who are non-binary, transgender and/or asexual. There is a story that is not often told which can delay self-awareness and coming out to friends and family. Many of us take for granted that we will be able to see people like ourselves reflected in the pages of a book, and that representation is powerful. LGBTQIA+ people, and specifically in this case non-binary and asexual people, should similarly be able to find people with similar stories and experiences to their own...'

In addition to being a Stonewall Honour Book and Alex Award recipient, *Gender Queer* is listed as the ALA YALSA Best Books of 2020: Great Graphic Novels for Teens (2020), ALA YALSA Outstanding Books for the College Bound (2020), Chicago Public Schools Great Graphic Novels (2021), Denver Public Schools Top 100 High School Books (2020-21), Howard County Public Schools (MD) Best of the Year – High School (2019), Iowa High School Battle of the Books (2021), Jefferson County (KY) Public Schools Recommended Reading Grades 9-12 (2021), New York Public Library's 50 Best Books for Teens (2019), School Library Journal 17 Immersive Graphic Novels for Teens, Summer Reading 2021, Texas Library Association: Maverick Graphic Novel Reading List, 2020, and was a nominee for the Garden State Teen Book Awards (2021).

*c) general character of the publication, including whether it is of a medical, legal or scientific character, and*

The publication is an autobiographical graphic novel. While the publication touches on themes related to human development, sexuality, and gender, it is not of a medical, legal or scientific character. Instead, the work is best understood as a narrative that provides insight into the lived experience of a non-binary and asexual individual, offering both personal reflection and broader social commentary.

*d) persons or class of persons to or amongst whom it is published or is intended or likely to be published.*

The CRB2 notes that the likely audience includes teen readers who may be negotiating similar issues. The graphic novel format is popular with young adult readers. *Gender Queer* is just one of many contemporary graphic memoirs to tackle complex topics of interest to young adult readers including for example, *Pity Party* by Tyler Feder (cancer and grief); *El Deafo* by Cece Bell (deafness); *Guts* by Raina Telgemeier (anxiety and illness). Generally speaking, the graphic novel format makes the heaviest topics more accessible to readers of all ages.

The American Library Association recommends *Gender Queer* as appropriate reading for ages 14+. Amazon's recommended reading age for is 16+ (USA, Australia, and UK), Common Sense Media recommends the book for ages 16+, Barnes and Noble (USA) recommends the book for ages 15+, and Maia Kobabe recommends the book for ages 16+. In July 2019, the School Library Journal (USA) listed *Gender Queer* as recommended reading for grades 11 and up, before amending its

recommendation in December 2019 to grades 9 and up. ALIA has not placed any restriction on *Gender Queer* within Australian public libraries.

## The front and rear covers

The CRB2 found that the cover of the publication was suitable for public display for the following reasons:

The front cover is low in impact; therefore, it is suitable for public display. The cover features the title, *Gender Queer: A Memoir*, the author's name, and a mirrored image of figures standing in water. The upper figure has short hair and is wearing a t-shirt and pants or shorts that have been rolled up above the knees. The lower figure has long hair reaching below the shoulders and is only wearing shorts. A circular marker notes that the publication has been recognised as a 'Stonewall Honor Book' by the American Library Association.

The rear cover is low in impact; therefore, is suitable for public display. The cover features a blurb that reads in full: "In *Gender Queer*, Maia Kobabe has crafted an intensely cathartic autobiography about eir path to identifying as nonbinary and asexual, and coming out to eir family and society. By addressing questions about gender identity – what it means and how to think about it – the story also doubles as a much-needed, useful and touching guide."

## 11. Summary

After a thorough review, the Classification Review Board (CRB2) has upheld the Classification Board's original classification of *Gender Queer* as Unrestricted, with the consumer advice 'M - Not recommended for readers under 15 years'. The decision follows a detailed examination of the publication in accordance with the Classification Act, the National Classification Code, and the Classification Guidelines, considering the submission from the Applicant, public submissions, and the Federal Court's judgment.

*Gender Queer* is an autobiographical graphic memoir that explores themes of gender identity, asexuality, and self-discovery. The publication includes depictions of sexual activity, nudity, and discussions on sensitive topics like puberty and sexual orientation. While some material may be discomforting to certain readers, the CRB2 found that the publication's content does not meet the threshold for Refused Classification or Restricted status. The depictions are artistic, highly stylised, and serve the narrative context of the author's exploration of their identity.

The Unrestricted classification reflects the publication's literary, artistic, and educational value. The consumer advice of "M - Not recommended for readers under 15 years" is appropriate to protect younger readers while ensuring that older teens and adults retain access to diverse and important narratives.