

A N N U A L R E P O R T

OF THE

SOUTH AUSTRALIAN CLASSIFICATION

COUNCIL

For the
Year Ended 30 June 2006

Submitted to the Honourable the Attorney-General
pursuant to Section 90 (1) of the
Classification (Publications, Films and Computer Games) Act 1995

ANNUAL REPORT of the SOUTH AUSTRALIAN CLASSIFICATION COUNCIL

for the Year Ended 30 June 2006

The Honourable Michael Atkinson, MP, Attorney-General for South Australia,

Sir,

Pursuant to the provisions of Section 90 (1) of the *Classification (Publications, Films, Computer Games) Act 1995*, the South Australian Classification Council respectfully submits this report, to be laid before both Houses of Parliament, on its activities for the year ended 30 June 2006.

COUNCIL MEMBERSHIP

Three members of the Council constitute a quorum.

During the year the Council comprised the following members:

A legal practitioner, Ms Julie Redman, LL.B (Chairperson);

A person skilled in the field of child psychology, Mr Michael Dawson (B.A., DipEd, Registered Psychologist (MAPS));

A person with wide experience in education, Vacant

Three other people who possess, in the opinion of the Governor, other proper qualifications to participate in the deliberations and functions of the Council:

Mr Anthony Durkin (LL.B.)

Rev Doctor Robert Iles (B.Ed., L.T.H., Dip.R.E., M.A., Ph.D.)

Ms Katherine O'Neill (B.A. (Hons), LL.B (Hons))

Registrar

Ms Wilhelmina Chapman of the Attorney-General's Department.

RELATIONSHIP BETWEEN THE COMMONWEALTH OFFICE OF FILM AND LITERATURE CLASSIFICATION AND THE SOUTH AUSTRALIAN CLASSIFICATION COUNCIL

The Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* came into effect in January 1996. The Act provides for the classification of publications, films, and computer games by the Commonwealth Classification Board in accordance with the criteria set in the National Classification Code and classification guidelines.

Classification decisions made by the Board are adopted by South Australia but may be reviewed under the State *Classification (Publications, Films and Computer Games) Act 1995*. The South Australian Classification Council or the Minister may classify a publication, film or computer game despite the fact that it is classified under the Commonwealth Act. Such a classification has effect to the exclusion of any classification under the Commonwealth Act.

The classification criteria in the State Act are identical to the criteria applied by the Commonwealth Board to ensure that decisions are made on the same basis at both State and Commonwealth levels. Despite this there may still be a difference between the two bodies because the Council is comprised of South Australian residents and endeavours to consider the standards accepted by the South Australian community in particular.

APPLICATION OF CRITERIA TO BE APPLIED BY THE COUNCIL PURSUANT TO SECTION 19 OF THE ACT

The Council must comply with section 19 of the *Classification (Publications, Films and Computer Games) Act 1995*, which states:

19. The matters to be taken into account by the Council or the Minister in making a decision on the classification of a publication, film or computer game include:
 - (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
 - (b) the literary, artistic or educational merit (if any) of the publication, film or game; and
 - (c) the general character of the publication, film or game, including whether is of a medical, legal or scientific character; and
 - (d) the persons or class of person to or amongst whom it is published or is intended or likely to be published.

Classification decisions are to give effect, as far as possible, to the following principles:

- (a) adults should be able to read, hear and see what they want;
- (b) minors should be protected from material likely to harm or disturb them;
- (c) everyone should be protected from exposure to unsolicited material that they find offensive;
- (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 a person in a demeaning manner.

ACTIVITIES OF THE SOUTH AUSTRALIAN CLASSIFICATION COUNCIL

Costs

The Council met five times in 2005 - 2006. Its expenditure for the year was \$3,600.

Inquiries received from the general public in relation to censorship in SA

During 2005-2006 a number of queries were received relating to censorship in its broad sense. A number of the inquiries related to matters outside the jurisdiction of the South Australian Classification Council. In those cases, people requesting information were directed to the appropriate organisation that could assist them.

Below is a table of all inquiries received in 2005-2006.

Inquiries Received	NO RECEIVED
Complaint about advertising	3
Information about classification of CDs	1
Query about classification of a computer game	2
Query about classification of films/video/DVD	5
Query about film classification labelling	2
Complaint about merchandise	5
Query about classification of publications	2
Query about exhibition of films/videos/DVDs	3
Query about content of a Internet site	2
Complaint about TV content	5
Query about SA Classification Council	1
Complaint about trailers shown with main film	3
Information about the classification of films	2
Information about the classification of publications	3
TOTAL	39

Review of Classifications

1. Publication

Council did not consider the classification of any publications.

2. Films

The Council considered three films:

- Birth
Council classified the film MA15+
See Appendix A for the Council's Report on 'Birth'.
- 9 Songs
Council classified the film X18+.
See Appendix B for the Council's Report on '9 Songs'
- Mysterious Skin
Council did not change the R18+ classification of this film.
See Appendix C for the Council's Report on 'Mysterious Skin'.

In addition Council viewed two films at the request of the Attorney-General. An exemption from classification had been sought to show the films at a film festival. Council provided the Attorney-General with advice regarding the suitability of exhibiting the films publicly taking into account the likely audience of the films.

3. Computer Games

The Council did not consider the classification of any computer games.

THE CLASSIFICATION OF THEATRICAL PERFORMANCES BOARD

Under the *Classification of Theatrical Performances Act 1978* members of the South Australian Classification Council are also members of the Classification of Theatrical Performances Board.

APPLICATION OF CRITERIA TO BE APPLIED BY THE BOARD PURSUANT TO SECTION 11 OF THE ACT

The Board must comply with section 11 of the *Classification of Theatrical Performances Act 1978*, which states:

11. (1) In considering questions as to whether a theatrical performance is offensive, or suitable or unsuitable for children, the Board shall have regard to standards of morality, decency and propriety that are generally accepted by reasonable adult persons.

11. (2) In performing its functions under this Act the Board shall have due regard to the nature of the theatrical performance under consideration and to all other relevant factors that bear upon the classification or conditions that should be assigned to, or imposed in respect of, the theatrical performance.

ACTIVITIES OF THE CLASSIFICATION OF THEATRICAL PERFORMANCES BOARD

Four complaints were received by the Board about the Crusty Demons 10th Anniversary Tour which took place at the Adelaide Entertainment Centre on 27 and 28 May 2006. The complaints came from parents who found the content of the show to be unsuitable for their children. The Board wrote to the Adelaide Entertainment Centre suggesting that patrons be warned of the contents of shows that may be considered unsuitable for children.

COMMUNITY LIAISON SCHEME

The Community Liaison Scheme (CLS) is a joint State and Federal initiative designed to support the operation of the cooperative national classification scheme. Through a program of site visits, CLS staff provide an education service to business in each State and Territory involved in distributing, advertising, selling, hiring or exhibiting classified products. These include films, video/DVD, certain publications and computer games.

Through a program of site inspections and strategic projects aimed at industry sectors, CLS staff help to ensure that accurate and timely classification information is available to consumers of classified material, and in particular to those who wish to make informed decisions about the products consumed by those in their care. CLS staff undertake individual inspections of businesses in all States and Territories, identifying problems and providing advice on how to better comply with the legislative requirements of the national classification scheme. CLS also works with industry sectors (such as publishers, computer games distributors, the cinema industry, the sale/hire chains) to educate them on industry specific issues and encourage them to provide for classification costs and resulting requirements in their business cycle.

In the 2005-06 financial year, CLS staff spent 10 working days in South Australia, undertaking approximately 92 site visits in the Adelaide metropolitan area and surrounds.

Sites visited include cinemas, video hire stores, computer games stores, newsagents, markets and most major shopping complexes. Some breaches of the Act were detected. CLS officers commonly deal with breaches either by educating the retailer, exhibitor or distributor concerned or by reporting the matter to police.

CLASSIFICATION INFORMATION

South Australian Classification Council Website

The South Australian Classification website outlines the classification system, answers some common questions and explains how to complain about offensive material. The address is 'www.sacentral.sa.gov.au/agencies/cpb'.

Commonwealth Office of Film and Literature Website

The following information can be accessed at the Office of Film and Literature Classification's website: 'www.oflc.gov.au'

- The Commonwealth Act and Regulations
- Guidelines for the Classification of Publications
- Guidelines for the Classification of Films and Computer Games
- Classification Database
- Decisions of the Classification Review Board
- Notice of calls for public submissions on classification matters
- Annual reports of the Classification Board and Classification Review Board.

There is also general information for both consumers and industry.

Relevant Acts

The South Australian *Classification (Publications, Films and Computer Games) Act 1995* may be accessed at 'www.parliament.sa.gov.au'.

The Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* may be accessed at 'www.austlii.edu.au/au/legis/cth/consol_act/' or through the Office of Film and Literature Classification website

APPENDIX A

CLASSIFICATION OF THE FILM *BIRTH* BY JONATHAN GLAZER

Complaint

A complaint was received by the Council, by letter dated 10 June 2005, that this film should be refused classification. It submitted that the film could be used by paedophiles to persuade children that sex between adults and children was acceptable. It submitted that the film contained exploitative and offensive depictions of a child.

The Council decided to view the film, and did so on 4 August 2005.

Synopsis

Anna is a young widow about to remarry. Her plans are disrupted when a boy aged 10 appears, claiming to be her dead husband. Complications arise for her as she comes to believe his claim.

Current classification

The film is currently classified MA15+ in Australia. This means that children aged 15 and over may lawfully view or hire the film unaccompanied, but those under 15 cannot attend a screening or hire the film unless accompanied by a parent or guardian.

In the United Kingdom, the film was classified 15, meaning that no one younger than 15 may see it in a cinema or rent or buy it on video or DVD. In the United States, the advisory classification is 17, meaning that persons under that age are required to be accompanied by a parent or guardian. In New Zealand, the classification decision was 'Objectionable except if the availability of the publication is restricted to persons who have attained the age of 16 years'.

The film was released in Australian cinemas on 26 April 2005 and on DVD in early August 2005. No member of the public has complained to the Council after viewing the film, nor has the Council heard from any parent or guardian whose child has seen the film. Critical reviews of the film are available on the Internet.

Matters to be considered in classification

1. The *Classification (Publications Films and Computer Games) Act 1995*, s. 19, says:

The matters to be taken into account by the Council or the Minister in making a decision on the classification of a publication, film or computer game include—

- (a) *the standards of morality, decency and propriety generally accepted by reasonable adults; and*
- (b) *the literary, artistic or educational merit (if any) of the publication, film or game; and*
- (c) *the general character of the publication, film or game, 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.*

Section 18 says:

Publications, films and computer games are to be classified by the Council or the Minister in accordance with the National Classification Code and the national classification guidelines.

Council deliberations

Public standards of morality

This film contemplates the possibility of a romantic relationship between an adult and a child. The relationship is not one that Anna seeks. Rather, the possibility emerges because she comes to believe that Sean, though apparently a child, is really her husband in a child's form. This belief gives rise to the dilemma of relating to him both as her beloved husband and as a ten-year-old stranger. Thus, she questions him about the possibility of a sexual relationship, but resolves this by deciding that they will wait until he is 21 and marry.

It is only while Anna is able to sustain her belief in his claim that she approaches the child as a potential romantic partner. Once she realizes that he is not her husband, she loses all interest in him. She is not presented as a paedophile.

The film does not present the interactions between Anna and Sean as acceptable but as problematic. Sean himself exhibits little emotion, while Anna endures mental anguish. Other characters, such as Anna's fiancé and her mother, disbelieve Sean's claim and try to disabuse Anna of her belief. Anna's inability to dismiss Sean alienates her from those closest to her and threatens her relationships.

The Council thought that the Australian public is gravely concerned about child sexual abuse. A film that depicted actual child sexual abuse, or promoted sexual activity between adults and children, would not be tolerated by reasonable adults. The Council did not think, however, that a film would necessarily be refused classification only because it dealt with a theme of child sexual abuse. For example, the 1999 film *Lolita* is concerned with a romantic/sexual relationship between an adult and a child but was classified R18+.

The Council noted that an offensive or exploitative depiction of a child will result in an RC classification. It considered the particular scenes complained of, that in the bathtub¹, the conversation about a possible sexual relationship, and the kiss on the lips. Clearly these depictions would offend some viewers. The Council did not, however, consider them to be of such impact that the film should be banned.

Artistic merit

The film, which was screened at the Venice Film Festival, is meant as a serious artwork. The cast includes noted actors. The cinematography is of high quality. Critics writing for reputable journals have reviewed it favourably. For example, the *Christian Science Monitor* said:

'The eerie tale is steeped in brooding atmosphere and psychological suspense thanks to Glazer's hugely imaginative visual style and creative use of music, sound and silence. Huston gives a starmaking performance and Kidman is better than ever. Brilliant.'

¹ The Council understands that the film was not actually made by having the adult and the child naked together in the bath, even though that is how the finished scene appears.

The Council did not think that it was the purpose or the effect of the film to gratify any prurient interest.

General character

The film is an entertainment of a serious nature. It has no medical, legal or scientific character.

Likely or intended audience

The film is made for adult viewers. It is unlikely to appeal to children or to be selected by parents for children's viewing. It is slow-paced, even ponderous. The tone is sombre. Much of the film consists of brief conversations among adult family members in their homes. Many of the adult interactions are subtle and it would be difficult for child viewers to follow the storyline or the import of the interactions. The dialogue is sparse and there are many visuals of faces and family groups where little overt action occurs. Several scenes are silent, or nearly so.

Consistently with the suggestion that he is an adult in a child's body, Sean is portrayed as an unusual child. His demeanour is unvarying. He is taciturn, solemn and solely focussed on his claim to be Anna's husband. He treats adults as equals, regarding them dispassionately and without affection. His role involves chiefly mundane activities such as eating cake, taking a bath, being put to bed, etc rather than any more adventurous activities that might be likely to hold the interest of a child viewer. As there are no other children in the film, all his interactions are with adults. Their interest in him is limited to whether he is, or is not, the reincarnation of Anna's dead husband. The Council thought it unlikely that child viewers would warm to or identify with Sean.

Most children would find this film too boring to sit through. Children younger than high-school age would struggle to follow the story.

The Council noted the complainant's concern that a parent or guardian who is a paedophile might select the film with the intention of grooming his or her child to take part in sexual activity with the parent or guardian. It is not impossible that a paedophile parent or guardian could select the film with that intention, although it is also conceivable that a paedophile would be willing to break the law to show the child material that is more directly sexual in nature. The Council doubted that the exhibition of this film to a young child would, however, persuade the child to accept sexual relations between adults and children.

Code and Guidelines

The Code says that a film that describes or depicts a child in a way that is likely to cause offence to a reasonable adult is classifiable RC. A film that is unsuitable for a minor to see is classifiable R18+. A film that depicts or deals with matters of sex in such manner as to be unsuitable for viewing by persons under 15 is classifiable MA15+.

The Guidelines elaborate on the Code. The difference between the R18+ category and the MA15+ category is one of impact. Strong themes are permitted in MA15+ if justified by context. There are virtually no restrictions on themes in R18+. The RC guideline says that a film that contains depictions or descriptions of child sexual abuse, or exploitative or offensive depictions of a child, will be banned. That also applies to a film that promotes or provides instruction in paedophile activity.

Conclusion

The Council decided to classify the film MA15+. The theme of an adult-child relationship is a strong theme but its impact in this case is not so high as to require an R18+ classification. Children aged over 15 are likely to be aware of child sexual abuse as a social issue and to know that sexual activity between children and adults is a serious crime. With an MA15+ classification, children under 15 will not be able to select the film for themselves. Their parents would be unlikely to select it for them both because it would not appeal to children and because parents would not consider it suitable viewing. The Council noted that the Board had attached consumer advice of 'Adult themes; Strong sex scene'², which would be likely to alert parents that the film is unsuitable for younger children. The Council adopted this advice for South Australia.

The Council did not think the film likely to influence a child of any age to accept sexual relations with an adult. It did not consider that the film promoted or provided instruction in paedophile activity. It noted that some of the depictions of the child could offend some people but did not judge that the depictions were so offensive that the film should be classified RC.

APPENDIX B

CLASSIFICATION OF THE FILM '9 SONGS' BY MICHAEL WINTERBOTTOM

Complaint

The Council received two complaints about this film. It was argued that a film containing many scenes of actual sexual intercourse could not be accommodated in the R18+ category. It was argued that if this content is permissible in R18+, then the guidelines for that category have become meaningless. One complainant also expressed concern that films of actual sexual intercourse are tantamount to prostitution and may be psychologically damaging to the actors. Concern was also expressed that once the film is released on DVD, it will inevitably become available to children.

The Council decided to view the film, which it did on 11 August, 2005.

Synopsis

The film deals with the relationship between the lovers Matt and Lisa. It consists of scenes from their relationship alternated with concert performance scenes and scenes of Matt's work as a glaciologist.

Current classification

In Australia, the film has been classified R18+ by the Review Board, having been originally classified X18+ by the Classification Board. A minority of the Review Board would have classified it RC.

In New Zealand, the film was classified as 'Objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years.'

In the United Kingdom, the film is classified 18, which means that it can be screened and sold only to adults. This is equivalent to the R18+ category in Australia. The applicable guidelines for the 18 category provide that although adults should be free to choose their own entertainment, an exception is likely for 'more explicit images of sexual activity unless they can be exceptionally justified by context and the work is not a 'sex work''. The latter fall into the category R18 which is primarily for explicit works of consenting sex between adults. Such items are only available in licensed cinemas and sex shops.

In the United States, the Motion Picture Association of America has not rated the film.

Classification law

The Council is required by law to apply the principles given by s. 19 of the Act, and to apply the Code and the guidelines. Sections 18 and 19 provide:

18 Classification of publications, films and games in accordance with national code and guidelines

Publications, films and computer games are to be classified by the Council or the Minister in accordance with the National Classification Code and the national classification guidelines.

19 Matters to be considered in classification

The matters to be taken into account by the Council or the Minister in making a decision on the classification of a publication, film or computer game include—

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and*
- (b) the literary, artistic or educational merit (if any) of the publication, film or game; and*
- (c) the general character of the publication, film or game, 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 Classification Code incorporates four principles:

Classification decisions are to give effect, as far as possible, to the following principles:

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

The Code relevantly specifies that:

Films that depict, express or otherwise deal with matters of sex in such a way as to offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified, will be refused classification.

Films, other than RC films, that contain real depictions of actual sexual activity between consenting adults in which there is no violence, sexual violence, sexualised violence, coercion, sexually assaultative language, or fetishes or depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers, in a way that is likely to cause offence to a reasonable adult, and are unsuitable for a minor to see, will be X18+.

Films that are neither RC nor X18+ but are unsuitable for a minor to see will be R18+.

The Guidelines expound the concepts of impact and context and stipulate the content of each category.

Council deliberations

Public standards of morality, decency and propriety

South Australian law currently prohibits the sale (including hire) of X18+ films (penalty \$10 000). This prohibition is evidence that South Australian community standards do not presently accommodate films that extensively depict consenting adult sexual activity, even though they include no violence or offensive fetishes and even though they are bought by consenting adults for viewing in private.

Artistic merit

This film, which was screened at the Cannes Film Festival, is a serious artistic work. The director is well known for other works such as *Welcome to Sarajevo*, *Butterfly Kiss* and *Wonderland*. The cinematography is of high quality.

General character

The film is not of a legal, medical or scientific character such as to justify sexual content that would otherwise be impermissible.

Likely or intended audience

The film has recently been released on DVD. It is meant for an adult audience. It has been screened to an adult audience in South Australian cinemas under its current R18+ rating. In South Australia, a minor is not permitted to see an R18+ film in a cinema, even with parental permission, but a parent or guardian of a minor can lawfully exhibit an R18+ film to the minor at home (s. 32, s. 34(2)).

Code Principles

The first principle of the Code is that adults should be able to see what they want. This is a principle rather than an absolute right, because the law restricts the availability of some material even to consenting adults (RC or X18+ films). Rather, the principle implies that, in classifying, the Council should start from the position that adults should be able to view a film, rather than that they should not. Legal restrictions on adult viewing should only be imposed in keeping with the law and the guidelines.

The Code also requires that minors, and people who do not want the material, should be protected. The R18+ classification protects minors from seeing the material unless in a private place with the permission of a parent or guardian. Other than that, an R18+ DVD should not be in the possession of a minor. The consumer advice attached by the Review Board, warning of 'Actual sex, high-level sex scenes' should suffice to protect people who do not wish to encounter such material.

The community is concerned about violence, especially sexual violence, and demeaning portrayals. The relationship between Matt and Lisa is consensual and is not portrayed as violent or demeaning.

Guidelines

The guidelines indicate that, in general, films that contain depictions of actual sexual activity will be classifiable higher than R18+. Where they are non-violent depictions of consenting activity, they may be classifiable X18+. Otherwise, the only remaining category is RC.

Discussion

The contentious aspects of the film are coarse language, nudity, sex and drug use. Of these, the Council thought that neither the coarse language nor the drug use would be likely to require a classification higher than R18+. The Council did not judge the film to be suitable for minors and so did not consider that the film could be classified lower than R18+. The classification issue then is whether the nudity and sexual depictions in the film can be accommodated in R18+ or require a higher classification.

A substantial part of the film consists of scenes of actual sexual intercourse between consenting adults. These scenes are an important part the film, as they contain most of the information we are given about the relationship between Matt and Lisa, which is the sole subject of the film. Indeed, the director indicated in an interview with *The Guardian* newspaper that his purpose in making the film was to overcome the prudishness of cinema by going to the extreme of showing a relationship only through sex³. The sexual depictions are direct rather than incidental. The scenes are frequent, detailed and explicit. They could

³ "Books deal explicitly with sex, as they do with any other subject. Cinema has been extremely conservative and prudish. I wanted to go to the opposite extreme and show a relationship only through sex. Part of the point of making the film was to say, 'What's wrong with showing sex?'" Interview with *The Guardian* (*Guardian*, May 17, 2004)

not be described as fleeting or discreet. The relationship between the protagonists gives the scenes a context, but not so as to reduce the impact of the scenes.

High-impact material can be accommodated in the R18+ category but there are restrictions on the depiction of actual sexual activity in this category. The R18+ guideline says that 'Sexual activity may be realistically simulated. The general rule is 'simulation, yes - the real thing, no''. These scenes are not simulations so, ordinarily, the film would not be classified R. A general rule, however, implies the possibility of exceptions. The extent of exceptions would be controlled by the more general principles of the Code and the Act. Occasionally, depictions of actual sexual activity have been permitted in this category, for instance, *Romance*, *Intimacy* and *Irreversible*.

The Council considered whether the film could be accommodated in the R18+ category by making an exception from the general rule. It concluded, however, that these scenes appear to go beyond what has hitherto appeared in the R18+ category⁴ and to include the sort of material most often found in the X18+ category. This is a special category not defined by an impact test but by its content. It contains 'real depictions of actual sexual intercourse and other sexual activity between consenting adults'.

The Council accepted that the film may have artistic merit. Nonetheless, the majority of the Council considered that the film could not be accommodated in the R18+ category. If this content is accommodated within the R18+ category, then many films that are now classified X18+ might claim to be classifiable R18+. The public has, through the democratic process, decided to make the sale of X18+ films illegal in South Australia. That sets a standard of public decency which excludes this type of material. It is not the role of the Council to challenge community standards but to apply them as they have been set.

Decision

The Council, by majority, classified the film X18+.

⁴ The Guardian newspaper in the United Kingdom described the film as 'the most sexually explicit film in the history of mainstream British cinema' (Guardian, May 17, 2004).

APPENDIX C

CLASSIFICATION OF THE FILM MYSTERIOUS SKIN BY GREGG ARAKI

Complaint

The Council received a complaint that this film, which is classified R18+, should be classified RC, that is, banned. The complainant said that the film 'could provoke community harm by its potential to sexually arouse vulnerable viewers who have paedophile inclinations.... any implied message in the film about damage done by child sexual abuse could be swamped by prolonged scenes of molestation which may titillate viewers with paedophile inclinations'.

Classification law

The Act requires the Council, in classifying a film, to consider these matters:

- (a) *the standards of morality, decency and propriety generally accepted by reasonable adults; and*
- (b) *the literary, artistic or educational merit (if any) of the publication, film or game; and*
- (c) *the general character of the publication, film or game, 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 Act also requires the Council to apply the national classification code and guidelines (s.18).

The Code sets out the principles to be applied in classification:

- 1 *Classification decisions are to give effect, as far as possible, to the following principles:*
 - (a) *adults should be able to read, hear and see what they want;*
 - (b) *minors should be protected from material likely to harm or disturb them;*
 - (c) *everyone should be protected from exposure to unsolicited material that they find offensive;*
 - (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.*

Under the Code, RC films are those that:

- (a) *depict, express or otherwise deal with matters of 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); or*

(c) promote, incite or instruct in matters of crime or violence

Under the guidelines, a film will be RC for one of two reasons. It will (relevantly) be RC if its impact or content exceed what is permitted in R, or if it contains or includes:

detailed instruction or promotion in matters of crime or violence

promotion or provision of instruction in paedophile activity

depictions or descriptions of child sexual abuse or any other exploitative or offensive depictions or descriptions involving a person who is or appears to be a child under 18 years

gratuitous, exploitative or offensive depictions of

- *violence with a very high degree of impact or which are excessively frequent, prolonged or detailed*
- *cruelty or real violence which are very detailed or which have a high impact*
- *sexual violence*

A depiction will be exploitative if it appears to *debase or abuse for the enjoyment of others and lacks moral, artistic or other values*

A depiction will be offensive if it *causes outrage or extreme disgust*.

Synopsis

Neil and Brian, at the age of 8, are sexually abused by their sports coach. The film examines the effects of this abuse on their emotional development as adolescents and young adults.

Discussion

The film is presently classified R18+. The classification question before the Council was whether the film ought to be classified R18+ or RC. An RC classification may be applicable either because of the film's particular content or because the film exceeds the impact test for the R18+ category.

1. Does the content of the film require an RC classification?

The film does not appear to promote the crime of child abuse. The test for whether it is RC therefore appears to resolve itself into these questions:

- Does the film deal with matters of cruelty or violence in a way that so offends against the standards of reasonable adults that it should not be classified?
- Does the film describe or depict a child in a way that is likely to cause offence to a reasonable adult?
- Does the film instruct in child abuse?

These questions are to be answered in the light of the guidelines.

Cruelty or violence

The abuse of the children is not violent. The film, however, includes a violent rape scene between adults. Neil is beaten in a bathtub and left with injuries. The Council noted that high-impact depictions of violence, including implied sexual violence, are permitted in the R18+ category if justified by context. For example, the film *Irreversible* includes a nine-minute rape scene as well as a scene in which a man is bashed to death using a fire extinguisher. Rape scenes have also appeared in *The Accused* (R18+) and *The General's Daughter* (MA15+).

In this case, the violence is of high impact. Factors that add to the impact include the realism and duration of this scene. It is more than fleeting. On the other hand, the impact is mitigated by context. The scene is integral to the film in that here Neil begins to recognise the risks he runs by selling sexual services to strangers. The film presents Neil's prostitution as a consequence of his abuse. The Council thought that the impact of the violence in this film was high but not so extreme that it could not be accommodated in the R18+ category.

Offensive depictions of children

The RC guideline says that a film will be refused classification if it contains or includes depictions or descriptions of child sexual abuse. This guideline elaborates the rule in the Code that a film is RC if it depicts a child in a way that would offend a reasonable adult.

The Council did not think the depictions of the children in this film would offend a reasonable adult. There are no depictions of sexual activity between the children, at the age of 8, and their coach: the abuse is implied but not shown on screen. There is a short description at the end of the film in which the two boys tell each other of the abuse they suffered. This is part of the resolution of the film, in which Brian at last recalls what really happened to him.

The Council did not think the guideline could intend that films about child sexual abuse will always be unlawful. Films dealing with this topic have been permitted in the MA15+ and R18+ categories in the past. For example, the film *Lolita*, which deals with an incestuous relationship between a girl aged 12 and her step-father, is classified R18+. *Capturing the Friedmans*, a documentary film studying the home life of a father and son convicted of paedophile crimes, is classified MA15+. *The Woodsman*, the main character in which is a paedophile released from prison after 12 years, is classified MA15+. *Palindromes*, dealing with the sexual adventures of a girl of 13, is classified R18+.

Clearly, a depiction of the actual abuse of a child, that is, of real events, would be RC and it may be this that the guideline intends to address. A depiction that was exploitative, that is, one that appeared to debase or abuse a child for the enjoyment of viewers and lacked moral, artistic or other values, would likewise be RC. Material that promoted or incited child abuse, or any other offensive depiction of a child, sexual or not, would also be RC.

The Council did not think the depictions in this film were of these kinds. The depictions of the children at the age of 8 would not cause outrage or extreme disgust to a reasonable adult.

The film also includes a scene between Neil, at the age of 15, and an adult male client. Sexual intercourse is implied. The scene is integral to the story in that Neil attempts to deal with his childhood abuse by gaining power over adult males through sex. Again, the Council did not think that this depiction would cause outrage or extreme disgust to a reasonable adult.

Instruction in crime or paedophilia

It is unlikely that just because a film depicts or implies criminal activity, it would be considered, in classification terms, to be instructing in it. Otherwise, a film that depicted the commission of any crime would be classified RC. Rather, the guidelines probably intend to refer to material that is instructional in nature or that tends to assist the viewer to perpetrate crime. The Council did not think the depictions of child abuse in this film would be considered instructional in this sense.

The Council concluded that the film was not RC on the basis of content alone.

2. Does the film exceed the impact test for the R18+ category such that it must be classified RC?

In making this assessment, the Council is required to take into account:

- public standards of decency, morality and propriety
- artistic or educational merit
- any scientific, medical or legal character
- the likely or intended audience.

The classifiable elements of this film are the theme, sex, coarse language, nudity, drug use and violence, including sexual violence.

(a) Public standards

Public standards clearly prohibit the circulation of child pornography. This is any depiction of a child that is

intended or apparently intended—

- (i) *to excite or gratify sexual interest; or*
- (ii) *to excite or gratify a sadistic or other perverted interest in violence or cruelty.* (Criminal Law Consolidation Act, s. 62.)

To possess or distribute such material is a criminal offence. This indicates a high level of public concern about depictions of child abuse. Depictions will not be child pornography, however, if they do not meet the criteria listed above, even though they may depict child sexual abuse. This suggests that public standards do accommodate some material concerned with child abuse, where the purpose is a legitimate rather than an unlawful purpose. The Council did not believe that a film would be banned only because it took child sexual abuse as its theme, or described incidents of child sexual abuse. For example, real incidents of child sexual abuse are from time to time reported and discussed in the media, including in investigative journalism.

(b) Artistic or educational merit

The film is a serious artwork. It has been exhibited at numerous festivals including the Venice, Toronto, Rotterdam and Sundance Film Festivals, as well as Australian festivals. It won the Jury Award at the Bergen International Film Festival in 2004 and the Golden Space Needle Award for best director at the Seattle Film Festival this year. At the Brisbane International Film Festival, it was nominated for an Inter-Faith award for promotion of humanitarian values. Reviewers writing in *The Age*, the *Sydney Morning Herald* and *The Australian* considered that the film had artistic value.

The Council also thought that the film had educational merit in that it illustrated the damage that can be done by child sexual abuse.

(c) Character

The film is not of a medical, legal or scientific character.

(d) Audience

The film is intended for an adult audience. It is not available to or marketed at children.

Classifiable elements

There are virtually no restrictions on the treatment of themes in R18+. Child abuse themes have been accommodated in the MA15+ and the R18+ categories in the films mentioned earlier.

Sexual activity can be realistically simulated in the R18+ category but actual sex is not generally permitted. The sexual activity in this film is simulated.

The R18+ category can include high-impact depictions of violence, including implied sexual violence, if justified by context. The Council judged that the depictions in this film are of high impact but are justified by context.

Nudity and drug use can be depicted in the R18+ category. There are virtually no restrictions on coarse language in this category.

The Council judged the film to be of high impact and unsuitable for a minor to see. It did not, however, judge that the impact of the classifiable elements exceeded the R18+ category.

The Council considered the complaint that the film could sexually arouse viewers who have paedophile inclinations. The classification criteria do not include whether a film might be sexually arousing to a viewer with particular sexual proclivities. That would not be a matter that the Council would be qualified to judge. Further, the law holds individuals personally responsible for their crimes, even if they may have derived the idea or the impetus for a crime from material they saw, heard or read, whether in the entertainment media or elsewhere.

Consumer advice

The consumer advice for the film is 'High level sexual abuse themes, high level sexual violence, paedophile themes'. The Council considered that this advice adequately alerts viewers to the film's content.

Conclusion

The Council did not change the R18+ classification.