

From: s47F, [REDACTED]
To: s47F, s47E(c) [REDACTED] s47F, s47E(c) [REDACTED]
Cc: s47F, [REDACTED] s47F, s47E(c) [REDACTED]
Subject: Re: Next meeting and thank you! [SEC=UNOFFICIAL]
Date: Friday, 2 June 2023 8:20:33 AM

Okay great.

Let's book in Monday at 5pm. I will organise a Teams link shortly.

Thank you!

s47F, [REDACTED]
s47E(c) [REDACTED]

Sent from [Outlook for Android](#)

From: s47F, s47E(c) [REDACTED] s47F, s47E(c) [REDACTED] @classification.gov.au>
Sent: Friday, June 2, 2023 8:19:11 AM
To: s47F, s47E(c) [REDACTED] s47F, s47E(c) [REDACTED]
s47F, s47E(c) [REDACTED]
Cc: s47F, s47E(c) [REDACTED] s47F, s47E(c) [REDACTED]
Subject: RE: Next meeting and thank you! [SEC=UNOFFICIAL]

UNOFFICIAL

Monday is great for me – let's tee it up
Happy to help at any time

UNOFFICIAL

From: s47F, s47E(c) [REDACTED]
Sent: Thursday, 1 June 2023 10:36 PM
To: s47F, s47E(c) [REDACTED]
Cc: s47F, s47E(c) [REDACTED] s47F, s47E(c) [REDACTED] s47F, s47E(c) [REDACTED]
s47F, s47E(c) [REDACTED] @classification.gov.au>
Subject: Re: Next meeting and thank you!

Hi s47F, [REDACTED]
s47E(c) [REDACTED]

Thank you, the discussion was really helpful this evening. I am available Monday and Tuesday after 5 pm and Wednesday not until after 7pm.

Thanks.

s47F, s47E(c) [REDACTED]

On 1 Jun 2023, at 8:36 pm, s47F, s47E(c) [REDACTED] wrote:

Hi, all

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Thank you so much for the chat earlier. I really appreciate you all being so candid and open with your discussion points, and I think we covered some good ground. We're getting closer!

s47F, F, it was amazing to hear your perspective on how to classify this kind of content, and where it fits within the Guidelines. I'm hoping I can call upon you again so that s47F, s47F(c) can also benefit from your wisdom and experience, if that is okay with you?

s47F, s47E(c) and I have suggested that anytime after 5pm on Monday, Tuesday, or Wednesday next week might suit. Would any of those days/times work for you (s47F, s47F) and s47F)?

Thank you all again.

s47F,
s47E(c)
s47F, s47E(c)

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From: s47F, s47E(c)
 Subject: Re: CRB decision template for publications [SEC=OFFICIAL]
 Date: 6 Jun 2023 at 9:24:46 am
 To: s47F, s47E(c) @communications.gov.au
 Cc: s47F, s47E(c) @communications.gov.au,
 s47F, s47E(c) s47F, s47E(c)
 s47F, s47E(c)

That's great, s47F, s47E(c). Thank you so much.

We've never had a split decision in the 5 years that I have been on the Review Board, and I am not aware of any decisions prior to 2018 that weren't unanimous.

I think we have everything we need now.

Thank you so much again for your help.

s47F,
s47E(c)

Sent from [Outlook for Android](#)

From: s47F, s47E(c) @communications.gov.au>
Sent: Tuesday, June 6, 2023 9:19:31 AM
To: s47F, s47E(c)
Cc: s47F, s47E(c) @communications.gov.au>; s47F, s47E(c)
 s47F, s47E(c) s47F, s47E(c)
Subject: RE: CRB decision template for publications [SEC=OFFICIAL]

OFFICIAL

Good morning s47F, s47E(c) (and s47F, s47E(c) and s47F, s47E(c)),

With split decisions/minority opinions, there isn't a separate template. There

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just needs to be a short statement outlining the minority opinion and the justification for it.

I'm trying to remember if there has been a split decision for the Review Board before – I will dig around and send that if I can find one. If you or s47F, s47E(c) can think of one let me know.

s47C



The layout of Board reports obviously differs slightly from the Review Board format but I would suggest the minority opinion statement would sit best at the end of the 'Reasons for Decision' section.

s47C



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s47C

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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s47C

[Redacted text block 1]

[Redacted text block 2]

[Redacted text block 3]

[Redacted text block 4]

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s47C

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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s47C
[Redacted]

I hope this helps and I'll let you know if I can find a Review Board decision with a minority opinion. If you have further questions drop me another email or give me a call.

Kind regards,

s47F,
s47E(c) [Redacted]

OFFICIAL

From: s47F, s47E(c) [Redacted]

Sent: Tuesday, 6 June 2023 12:31 AM

To: s47F, s47E(c) [Redacted] <[\[Redacted\]@communications.gov.au](mailto:[Redacted]@communications.gov.au)>

Cc: s47F, s47E(c) [Redacted] <[\[Redacted\]@communications.gov.au](mailto:[Redacted]@communications.gov.au)>;

s47F, s47E(c) [Redacted]

s47F, s47E(c) [Redacted]

s47F, s47E(c) [Redacted]

Subject: RE: CRB decision template for publications [SEC=OFFICIAL]

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Hi, s47F, s47E(c)

I hope you are enjoying your week.

If you don't mind, can we please get a template (I'm assuming there is one) for a split decision? Also, would you happen to have any samples of Board reports (preferably for publications) that contain a split decision?

Thank you for your help,

s47F, s47E(c)

From: s47F, s47E(c) <[REDACTED]@communications.gov.au>

Sent: Monday, May 29, 2023 4:21 PM

To: s47F, s47E(c) <[REDACTED]> s47F, s47E(c) <[REDACTED]>

s47F, s47E(c) <[REDACTED]> s47F, s47E(c) <[REDACTED]>

Cc: s47F, s47E(c) <[REDACTED]@communications.gov.au>

Subject: CRB decision template for publications [SEC=OFFICIAL]

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Hey s47F, s47E(c), s47F, s47E(c) and s47F, s47E(c)

Please see attached for a draft CRB decision template for publications.

Feel free to give me a call if you have any questions.

Kind regards,

s47F, s47E(c)

Senior Project Officer • Classification Services • Classification Branch

Online Safety, Media and Platforms Division

s47F, s47E(c) [@communications.gov.au](mailto:communications.gov.au)

P s47F, s47E(c)

Locked Bag 3 Haymarket NSW 1240

www.classification.gov.au

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I would like to acknowledge the traditional custodians of this land on which we meet, work and live. I

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recognise and respect their continuing connection to the land, waters and communities. I pay my respect to Elders past and present and to all Aboriginal and Torres Strait Islanders.

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From: s47F, s47E(c)
Subject: Re: My notes on p.135 of Gender Queer
Date: 7 Jun 2023 at 9:44:23 pm
To: s47F, s47E(c)
Cc: s47F, s47E(c)

Thank you for this, very helpful.

As mentioned, I hope to talk to you tomorrow when you are free after 3 pm.

Thank you.

s47F, s47E(c)

On 7 Jun 2023, at 7:49 pm, s47F, s47E(c) wrote:

Evening s47F, s47E(c)

I thought I'd send you the notes I compiled regarding GQ with a focus on the panel on page 135. s47F, s47E(c)

Anyway, I just thought they'd be useful to help draft your minority viewpoint (assuming you are not agreeing to classify this one as Unrestricted M) in that you might find some material to argue against or some other perspectives.

Be sure to add any reading time to your invoice (same for you, s47F, s47E(c)).

I'm available to chat tomorrow after 3pm or anytime Friday evening.

Talk soon,

s47F, s47E(c)

<Gender Queer Page 135.docx>

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From: s47F,
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Draft report
Date: Wednesday, 7 June 2023 9:22:20 AM
Attachments: [CRB Decision - Gender Queer - Draft s47F.docx](#)

Hello Team,

Thank you for kicking off a draft report, s47F, s47E(c). I have taken the liberty of making some suggested revisions on the attached (highlighted). A couple comment boxes, as well. Nothing concrete, just proposals.

I note that this currently isn't making any specific references to page numbers and the details of what is depicted in the publication. Is that because a CRB decision that effectively agrees with the original board decision, isn't required to do so? Or is that level of specificity something that will still be expected of our report, given the nature of everything?

Thanks for clarifying.

s47F,
s47E(c)

On Tue, Jun 6, 2023 at 12:31 AM s47F, s47E(c) wrote:

Hello s47F, s47E(c) and s47F, s47E(c)

Thank you again for a great discussion. We're certainly challenging each other with this one which (I hope) can only be a good thing.

As promised, here is the draft report I wrote yesterday. I have written it as a unanimous 'Unrestricted – Not recommended for readers under 15' decision, but this can obviously be changed if we land on a majority / minority result.

I'm really looking forward to hearing your thoughts.

As always, I'm here for whatever help and support you need so please do reach out anytime.

Talk soon,

s47F,
s47E(c)



Australian Government
Classification Review Board

Date: 29 May 2023

Applicant: Bernard Gaynor

Interested parties: See Appendix A

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

2. Legislative provisions

The *Classification (Publications, Computer game and Computer Games) Act 1995* (Cth) (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:

1. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

- 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:

OR

Publications (except RC publications, and Category 2 publications)

explicitly depict nudity, or describe or impliedly depict sexual or sexually related activity between consenting adults, in a way that is likely to cause offence to a reasonable adult; or describe or express in detail violence or sexual activity between consenting adults in a way that is likely to cause offence to a reasonable adult; or are unsuitable for a minor to see or read **are to be classified Category 1 restricted**, and the Code also sets out various principles to which classification decisions should give effect, as far as possible:

OR

Publications (except RC publications) that explicitly depict sexual or sexually related activity between consenting adults in a way that is likely to cause offence to a reasonable adult; or depict, describe or express revolting or abhorrent phenomena in a way that is likely to cause offence to a reasonable adult and are unsuitable for a minor to see or read **are to be classified Category 2 restricted**, and the Code also sets out various principles to which classification decisions should give effect, as far as possible:

OR

Publications describe, depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or 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 promote, incite or instruct in matters of crime or violence **are to be classified RC**, 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.

2. Review of Classification Board's decision to classify the publication *Gender Queer*
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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

Three members of the Review Board met on 29 May 2023, in response to the receipt of an application from Bernard Gaynor on 5 May 2023, to conduct the **classification** review of the publication, *Gender Queer*, which had previously been classified **Unrestricted** with consumer advice of **M – Not recommended for readers under 15 years** by the Classification Board. The Review Board determined that the application was a valid application.

The Review Board was provided a written submission from the Applicant.

The Review Board read the publication.

The Review Board was provided written submissions from the interested parties listed in Appendix A.

The Review Board heard an oral submission from the Applicant.

The Review Board heard an oral submission from a representative of the Australian Library and Information Association.

The Review Board then considered the matter.

4. Evidence and other material taken into account

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

- (i) Bernard Gaynor's application for review
- (ii) Bernard Gaynor's written and oral submissions
- (iii) The written and oral submissions of interested parties
- (iv) The publication, *Gender Queer*
- (v) The relevant provisions in the Classification Act, the Code and the Guidelines, and
- (vi) The Classification Board's report.

5. Synopsis

Gender Queer is an autobiographical non-fiction graphic memoir, written by Maia Kobabe, that explores the author's path to identifying as nonbinary and asexual. This 240-page edition was published in 2020 by Oni-Lion Forge Publishing Group.

6. Findings on material questions of fact

The Review Board 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 wearing shorts. A

3. Review of Classification Board's decision to classify the publication *Gender Queer*
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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, which introduces the focus of the publication, with the following statement: "In *Gender Queer*, Maia Kobabe has crafted an intensely cathartic autobiography about her path to identifying as nonbinary and asexual, and coming out to her 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.~~"

Commented [S47E]: Is it necessary to include the full blurb? I'm happy to discuss why I think this part might not be needed.

The Review Board found that the publication contains aspects or depictions of importance under various classifiable elements:

- (a) **Themes**—the publication details the author's journey toward identifying as nonbinary and asexual. The exploration of these themes are clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, the illustration on the front cover, and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (b) **Violence**—the publication features a depiction of highly stylised, metaphorical violence.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (c) **Sex**—there is a pervasive narrative element of sex throughout the publication that is consistently mitigated by multiple contributing factors, such as:

Descriptions and depictions of sex are justifiably interlinked with the publication's central conceit of a memoir recounting how the author struggled to make sense of gender identity and sexuality.

Depictions of sexual activity are highly stylised and contain little or no realistic detail.

Descriptions and depictions of, and references to, sexual activity involving consenting adults is not exploitative or gratuitous.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (d) **Language**—the publication contains infrequent strong coarse language, some of which is used with sexual connotations that are justified by context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (e) **Drug Use**—not present in the publication.

- (f) **Nudity**—the publication contains infrequent, stylised depictions of male and female nudity, including genitalia. These depictions are lacking in detail.

The impact of this element is no higher than moderate and can be accommodated at the M level.

7. Reasons for the decision

The publication is an autobiographical memoir, as indicated by the front and rear covers, and the statement on the title page that reads, 'This is a work of non-fiction'. It is based on the conceit that the content represents the author's recollections of lived experiences at different stages of the author's life. It is presented using the visual style of a graphic novel.

The publication contains highly stylised depictions of classifiable elements that are consistently justified by context and appropriate for its intended audience of readers interested in learning about the experiences of the author, and reflecting on the publication's central themes of sexuality and gender identity.

The publication contains highly stylised depictions of nudity and sex that, when considered within the broader context of the publication, are moderate in impact, and are not exploitative, gratuitous, or very detailed.

Given the character of the publication, its recognised literary merit, and the likely intended audience of the publication, the Review Board considers the treatment of the classifiable elements to be moderate in impact, and not depicted in such a way that they offend against the standards of morality, decency, and propriety generally accepted by reasonable adults, to the extent that this publication should be legally restricted.

~~The Review Board notes that the publication contains references to sexual activity, such as masturbation, by a minor. In the Review Board's opinion, these sexual references are treated sensitively, and not in a way that they offend against the standards of morality, decency, and propriety generally accepted by reasonable adults, or in a way that is likely to cause offence to a reasonable adult.~~

Commented s47E: This seems an unnecessary addition?

8. Summary

Pursuant to the Guidelines, the impact of the classifiable elements in this publication are no higher than moderate. However, the Review Board recognises that some content with this publication may offend some sections of the adult community, and may not be suitable for younger readers. It is therefore the unanimous view of the Review Board that the publication warrants a classification of: Unrestricted with the consumer advice of 'M – Not recommended for readers under 15 years'. This consumer advice does not constitute a legal restriction.

9. Appendix A-Names of interested parties

6. Review of Classification Board's decision to classify the publication *Gender Queer*
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From: s47F, s47E(c)
Subject: Updated document
Date: 8 Jun 2023 at 6:19:41 pm
To: s47F, s47E(c)

Hiya

Thanks for the chat! I really hope it helped. Do give me a shout if you need anything else.

s47F, s47E(c) 😊



Gender Queer Page 135
.docx
38 KB

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From: s47F,
To: s47F, s47E(c)
Cc: s47F,
Subject: Re: Draft report
Date: Friday, 9 June 2023 8:08:13 PM
Attachments: [CRB Decision - Gender Queer - Working Document - Draft s47E\(c\) COMMENTS.docx](#)
 7F

Hi folks,

Looks like things are progressing. s47F, s47E(c), I've had a chance now to review the draft of the 'minority report' you sent through. I have made some comments (just three, don't worry). When you have a chance please go ahead and review and let me know your thoughts.

Thanks

s47F,
s47E(c)

On Fri, Jun 9, 2023 at 1:40 PM s47F, s47E(c) s47F, s47E(c) wrote:

Happy to send through, although I suggest I speak to these. I have a meeting this afternoon and will check if I can move it and will come back to you.

Talk soon.

s47F, s47E(c)

On 9 Jun 2023, at 1:28 pm, s47F, s47E(c) wrote:

Hi, s47F, s47E(c)

Thanks for sending this through. Did you want to forward your notes? Or organise another chat? It sounds like you still haven't made a firm decision so we should try and help you get there.

I'm free this afternoon after 3pm if that helps.

s47F,
s47E(c)

Sent from [Outlook for Android](#)

From: s47F, s47E(c)
Sent: Friday, June 9, 2023 1:18:52 pm
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Draft report

Dear s47F, s47E(c).

I am sending the below through in preparation for finalising the review.

s47C

s47C

s47F, s47C
s47E

[REDACTED]

[REDACTED]

[REDACTED]

I have a page of notes explaining the above decision, which I can speak to.

Thanks,

On 7 Jun 2023, at 10:20 am, [REDACTED] s47F, s47E(c)
[REDACTED] s47F, s47E(c) wrote:

Thanks for the prompt reply!

I do think it is (intentionally) violent imagery, but accept that it fits under themes. Not a deal breaker either way, as it's not a key element in the classification decision. I guess I was just trying to 'tick the boxes' and ensure we have covered everything.

Re: 'conceit' - yep, bin it. Could i suggest this instead?

p.4 **Descriptions and depictions of sex are justifiably interlinked with the publication's central thematic premise of a memoir recounting how the author struggled to make sense of gender identity and sexuality.**

p.5 **It establishes that the content represents the author's recollections of lived experiences at different stages of the author's life.**

Re: level of specificity, I thought that was the case. Just wasn't sure there were any kinds of extraordinary expectation attached to this one. And the possibility of being called upon to explain or justify. I guess that's what notes are for!

s47F,
s47E(c)

On Wed, Jun 7, 2023 at 10:00 AM [REDACTED] s47F, s47E(c)
wrote:

Hi, [REDACTED] s47F,
s47E(c)

I hope you are feeling better.

Thanks so much for this. The only thing I disagree with is the inclusion of violence in the text. Are you referring to the images on p128-129 depicting Maia feeling like she had been stabbed? I wouldn't classify this as violence, but themes.

No, we don't need to include the full the blurb (top of page 4).

I wouldn't use the word 'conceit' to describe the literary device. I think 'conceit' (even though you are using it correctly here) can be too easily misinterpreted as excessive pride, vanity, narcissism, arrogance, etc. I'd rather use 'container' or 'literary device' or 'central themes' or 'context' (for example).

Happy to delete the last paragraph under '7. Reasons for the decision'.

As for your question about referring to specific images/pages, etc, no we don't need to go into that much detail, unless we want to. (If you think back to previous CRB reports, we don't normally do this.) If you feel more comfortable addressing specific images/pages then feel free to do so. In my opinion, I feel it is better to provide our overall opinion of the text rather than drill down into the minutiae. That said, I would feel otherwise if the text had been RC'd and we needed to justify a lower classification rating.

Anyway, now that we have a majority, I'd like to wrap things up. ^{s47F,} ^{s47E(c)}, how are you travelling with a decision? Have you had a go at documenting your thoughts yet, or drafting a minority viewpoint? I've written a lengthy description of my thoughts regarding the panel on p135 that I am happy to forward to you if you think it might help? Just remember, whatever you write for the decision report, it needs to tie into context and intended audience. I know you'll get there, but shout if you need help.

Happy to organise another Teams meeting if need be, otherwise let's aim to have everything finalised by this Friday, if that suits.

s47F,
s47E(c)

From: s47F, s47E(c)
Sent: Wednesday, June 7, 2023 9:22 AM
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Draft report

Hello Team,

Thank you for kicking off a draft report, s47F, s47E(c). I have taken the liberty of making some suggested revisions on the attached (highlighted). A couple comment boxes, as well. Nothing concrete, just proposals.

I note that this currently isn't making any specific references to page numbers and the details of what is depicted in the publication. Is that because a CRB decision that effectively agrees with the original board decision, isn't required to do so? Or is that level of specificity something that will still be expected of our report, given the nature of everything?

Thanks for clarifying.

s47F,
s47E(c)

On Tue, Jun 6, 2023 at 12:31 AM s47F, s47E(c)
wrote:

Hello s47F, s47E(c) and s47F, s47E(c)

Thank you again for a great discussion. We're certainly challenging each other with this one which (I hope) can only be a good thing.

Released under the Freedom of Information Act 1982 by the
Classification Review Board, Australian Classification

As promised, here is the draft report I wrote yesterday. I have written it as a unanimous 'Unrestricted – Not recommended for readers under 15' decision, but this can obviously be changed if we land on a majority / minority result.

I'm really looking forward to hearing your thoughts.

As always, I'm here for whatever help and support you need so please do reach out anytime.

Talk soon,

s47F,
s47E(c)



Australian Government

Classification Review Board

Date: 29 May 2023

Applicant: Bernard Gaynor

Interested parties: See Appendix A

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

2. Legislative provisions

The *Classification (Publications, Computer game and Computer Games) Act 1995* (Cth) (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:

OR

Publications (except RC publications, and Category 2 publications)

explicitly depict nudity, or describe or impliedly depict sexual or sexually related activity between consenting adults, in a way that is likely to cause offence to a reasonable adult; or describe or express in detail violence or sexual activity between consenting adults in a way that is likely to cause offence to a reasonable adult; or are unsuitable for a minor to see or read **are to be classified Category 1 restricted**, and the Code also sets out various principles to which classification decisions should give effect, as far as possible:

OR

Publications (except RC publications) that explicitly depict sexual or sexually related activity between consenting adults in a way that is likely to cause offence to a reasonable adult; or depict, describe or express revolting or abhorrent phenomena in a way that is likely to cause offence to a reasonable adult and are unsuitable for a minor to see or read **are to be classified Category 2 restricted**, and the Code also sets out various principles to which classification decisions should give effect, as far as possible:

OR

Publications describe, depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or 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 promote, incite or instruct in matters of crime or violence **are to be classified RC**, 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

Three members of the Review Board met on 29 May 2023, in response to the receipt of an application from Bernard Gaynor on 5 May 2023, to conduct the review of the publication, *Gender Queer*, which had previously been classified **Unrestricted** with consumer advice of '**(M – Not recommended for readers under 15 years)**' by the Classification Board. The Review Board determined that the application was a valid application.

The Review Board was provided a written submission from the Applicant.

The Review Board read the publication.

The Review Board was provided written submissions from the interested parties listed in Appendix A.

The Review Board heard an oral submission from the Applicant.

The Review Board heard an oral submission from a representative of the Australian Library and Information Association.

The Review Board then considered the matter.

4. Evidence and other material taken into account

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

- (i) Bernard Gaynor's application for review
- (ii) Bernard Gaynor's written and oral submissions
- (iii) The written and oral submissions of interested parties
- (iv) the publication, *Gender Queer*
- (v) the relevant provisions in the Classification Act, the Code and the Guidelines, and
- (vi) the Classification Board's report.

5. Synopsis

Gender Queer is an autobiographical non-fiction graphic memoir, written by Maia Kobabe, that explores the author's path to identifying as nonbinary and asexual. This 240-page edition was published in 2020 by Oni-Lion Forge Publishing Group.

6. Findings on material questions of fact

The Review Board 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 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, which reads in full: "In *Gender Queer*, Maia Kobabe has crafted an intensely cathartic autobiography about her path to identifying as nonbinary and asexual, and coming out to her 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."

The Review Board found that the publication contains aspects or depictions of importance under various classifiable elements:

- (a) Themes—the publication details the author's journey toward identifying as nonbinary and asexual.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (b) Violence—not present in the publication.

- (c) Sex—there is a pervasive narrative element of sex throughout the publication that is consistently mitigated by multiple contributing factors, including:

The descriptions and depictions of sexual activity are largely highly stylised and contain little or no realistic detail.

Descriptions and depictions of, and references to, sexual activity involving consenting adults is not exploitative, gratuitous, or offensive.

The presence of sex and nudity in the publication is justified in context, specifically that of being a non-fiction memoir describing the author's lived experience.

Sex and nudity are justifiably interlinked with the publication's core themes of gender identity and 'coming out'. These themes are clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, the illustration on the front cover, and the blurb on the rear cover.

Some sex scenes are more impactful; however, they are justified by context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (d) Language—the publication contains infrequent strong coarse language, some of which is used with sexual connotations that are justified by context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (e) Drug Use—not present in the publication.

- (f) Nudity—the publication contains brief glimpses of male genitalia, and a montage scene with frequent nudity including full-frontal female nudity.

The impact of this element is no higher than moderate and can be accommodated at the M level.

7. Reasons for the decision

The publication is an autobiographical memoir, as indicated by the front and rear covers, and the statement on the title page stating, 'This is a work of non-fiction'.

The publication contains highly stylised depictions of classifiable elements that are justified by context and appropriate for its intended audience.

The publication contains themes that are low in impact and are not offensive to a reasonable adult to the extent that it should be legally restricted.

The publication contains highly stylised depictions of nudity and sex that are not high in impact and are not exploitative, offensive, gratuitous, or very detailed. Given the context of the publication, the character of the publication; the literary, artistic, and educational merit of the publication, and the likely intended audience of the publication, the Review Board does not consider that the treatment of themes, nudity, and sex in the publication offensive to a reasonable adult to the extent that it should be legally restricted.

The Review Board notes that the publication contains references to sexual activity, such as masturbation, by a minor. In the Review Board's opinion, these sexual references are treated sensitively, and not in a way that they offend against the standards of morality, decency, and propriety generally accepted by reasonable adults, or in a way that is likely to cause offence to a reasonable adult.

8. Summary

Pursuant to the Guidelines, the impact of the classifiable elements is no higher than moderate. However, the Review Board recognises that some content with this publication may offend some sections of the adult community, and may not be suitable for younger readers. It is therefore the unanimous view of the Review Board that the publication warrants a classification of: Unrestricted with the consumer advice of '(M – Not recommended for readers under 15 years'. This consumer advice does not constitute a legal restriction.

9. Appendix A-Names of interested parties

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Australian Government
Classification Review Board

Date: 29 May 2023

Applicant: Bernard Gaynor

Interested parties: See Appendix A

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

2. Legislative provisions

The *Classification (Publications, Computer game and Computer Games) Act 1995* (Cth) (the Classification Act) governs the classification of publications and the review of classification decisions.

The Review Board

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- c) the publisher of the publication, or
- d) a person aggrieved by the decision.

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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:

1. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

- 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

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

3. Procedure

Three members of the Review Board met on 29 May 2023, in response to the receipt of an application from Bernard Gaynor on 5 May 2023, to conduct the classification review of the publication, *Gender Queer*, which had previously been classified **Unrestricted** with consumer advice of '**M – Not recommended for readers under 15 years**' by the Classification Board. The Review Board determined that the application was a valid application.

The Review Board was provided a written submission from the Applicant.

The Review Board read the publication.

The Review Board was provided written submissions from the interested parties listed in Appendix A.

The Review Board heard an oral submission from the Applicant.

The Review Board heard an oral submission from a representative of the Australian Library and Information Association.

The Review Board then considered the matter.

2. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

4. Evidence and other material taken into account

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

- (i) Bernard Gaynor's application for review
- (ii) Bernard Gaynor's written and oral submissions
- (iii) The written and oral submissions of interested parties
- (iv) The publication, *Gender Queer*
- (v) The relevant provisions in the Classification Act, the Code and the Guidelines, and
- (vi) The Classification Board's report.

5. Synopsis

Gender Queer is an autobiographical non-fiction graphic memoir, written by Maia Kobabe, that explores the author's path to identifying as nonbinary and asexual. This 240-page edition was published in 2020 by Oni-Lion Forge Publishing Group.

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The Review Board 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 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 describes the focus of the publication with the following statement: "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."

The Review Board found that the publication contains aspects or depictions of importance under various classifiable elements:

- (a) Themes—the publication details the author's journey toward identifying as nonbinary and asexual. The exploration of these themes is clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, rear cover, and spine; the illustration on the front cover; and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (b) Violence—not present in the publication.
- (c) Sex—there is a pervasive narrative element of sex throughout the publication that is consistently mitigated by multiple contributing factors:

3. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

Descriptions and depictions of sex are justifiably interlinked with the publication's central premise of a memoir recounting how the author struggled to make sense of gender identity and sexuality.

Descriptions and depictions of sex are highly stylised and contain little or no realistic detail.

Descriptions and depictions of, and references to, sexual activity involving consenting adults is not exploitative, or gratuitous.

The presence of sex and nudity in the publication is justified in context, specifically that of being a non-fiction memoir describing the author's lived experience.

Sex and nudity are justifiably interlinked with the publication's core themes of gender identity and 'coming out'. These themes are clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, the illustration on the front cover, and the blurb on the rear cover.

Some sex scenes are more impactful; however, they are justified by context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (d) Language—the publication contains infrequent strong coarse language, some of which is used with sexual connotations that are justified by context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (e) Drug Use—not present in the publication.

- (f) Nudity—the publication contains infrequent, highly stylised depictions of male and female nudity, including full-frontal nudity. These depictions are lacking in detail and justified in context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

7. Reasons for the decision

The publication is an autobiographical memoir, as indicated by the front and rear covers, and the statement on the title page that reads, 'This is a work of non-fiction'. The publication contains recollections of the authors' real, lived experiences that occurred through the author's life. The recollections are presented using the visual style of a graphic novel.

The publication contains highly stylised depictions of classifiable elements that are consistently justified by context and appropriate for its intended audience. The Review Board recognises that the intended audience for this publication are readers interested in the author, and/or interested in the publication's central themes of gender identity and asexuality.

The publication contains highly stylised depictions of nudity and sex that, when considered within the broader context of the publication, are no higher than moderate in impact, and are not exploitative, offensive, gratuitous, or very detailed.

Given the context of the publication, the character of the publication, its recognised literary and educational merit, and the likely intended audience of the publication, the Review Board considers the treatment of the classifiable elements to be no higher than moderate in impact, and not depicted in

Commented 547E]: I'm not comfortable suggesting that nudity and 'coming out' need in any way to be thought of as interlinked. I don't see that there is an important thematic connection there at all? My preference is that this be changed from 'coming out' to 'asexuality'.

Commented 547E]: I don't think the meaning is clear here – more impactful than what? I'm not sure this line is needed?

Commented 547E]: I don't have confidence in the highlighted sentence. On a language level, is it necessary to say 'real' AND 'lived'? If they are lived, then they are real, right? Also (and I know I originally wrote this sentence in my previous draft, so the blame is on me), but if they are lived, then it's pretty redundant to also say they occurred in the author's life. Instead, my preference would be for the more concise and elegant:

'The publication contains recollections of the author's lived experiences, presented using the visual style of a graphic novel.'

such a way that they offend against the standards of morality, decency, and propriety generally accepted by reasonable adults to the extent that this publication should be legally restricted.

8. Summary

Pursuant to the Guidelines, the impact of the classifiable elements in the publication is no higher than moderate. However, the Review Board recognises that some content with this publication may offend some sections of the adult community and may not be suitable for younger readers. It is therefore the unanimous view of the Review Board that the publication warrants a classification of: **Unrestricted** with the consumer advice of '**M – Not recommended for readers under 15 years**'. This consumer advice does not constitute a legal restriction.

5. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

9. Appendix A-Names of interested parties

6. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

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From: s47F, s47E(c)
To: s47F, s47E(c)
Subject: Re: Draft report
Date: Monday, 12 June 2023 12:32:24 PM

s47F,
s47E(c),
s47C

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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s47F, s47E(c),
s47C

[Redacted text block 1]

[Redacted text block 2]

[Redacted text block 3]

[Redacted text block 4]

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s47F, s47E(c), s47C
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: s47F, s47E(c)
Sent: Friday, June 9, 2023 1:40 PM
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Draft report

s47F, s47E(c), s47C
[Redacted]

[Redacted]

[Redacted]

On 9 Jun 2023, at 1:28 pm, s47F, s47E(c) wrote:

s4 s47F,
7F s47E(c)

s47F, s47E(c), s47C
[Redacted]

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s47F, s47E(c)

s47F,
s47E(c)

Sent from [Outlook for Android](#)

From: s47F, s47E(c)
Sent: Friday, June 9, 2023 1:18:52 pm
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Draft report

Dear s47F, s47F,
47E(47E(

I am sending the below through in preparation for finalising the review.

s47C
[Redacted]

[Redacted] 47E(

[Redacted]

[Redacted]

[Redacted]

I have a page of notes explaining the above decision, which I can speak to.

Thanks,

On 7 Jun 2023, at 10:20 am, s47F, s47E(c)
s47F, s47E(c) wrote:

Thanks for the prompt reply!

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I do think it is (intentionally) violent imagery, but accept that it fits under themes. Not a deal breaker either way, as it's not a key element in the classification decision. I guess I was just trying to 'tick the boxes' and ensure we have covered everything.

Re: 'conceit' - yep, bin it. Could i suggest this instead?

p.4 Descriptions and depictions of sex are justifiably interlinked with the publication's central **thematic premise** of a memoir recounting how the author struggled to make sense of gender identity and sexuality.

p.5 It **establishes** that the content represents the author's recollections of lived experiences at different stages of the author's life.

Re: level of specificity, I thought that was the case. Just wasn't sure there were any kinds of extraordinary expectation attached to this one. And the possibility of being called upon to explain or justify. I guess that's what notes are for!

s47F,
s47E(c)

On Wed, Jun 7, 2023 at 10:00 AM

s47F, s47E(c) wrote:

Hi, s47F,
s47E(c)

I hope you are feeling better.

Thanks so much for this. The only thing I disagree with is the inclusion of violence in the text. Are you referring to the images on p128-129 depicting Maia feeling like she had been stabbed? I wouldn't classify this as violence, but themes.

No, we don't need to include the full the blurb (top of page 4).

I wouldn't use the word 'conceit' to describe the literary device. I think 'conceit' (even though you are using it correctly here) can be too easily misinterpreted as excessive pride, vanity, narcissism, arrogance, etc. I'd rather use 'container' or 'literary device' or 'central themes' or 'context' (for example).

Happy to delete the last paragraph under '7. Reasons for the decision'.

As for your question about referring to specific images/pages, etc, no we don't need to go into that much detail, unless we want to. (If you think back to previous CRB reports, we don't normally do this.) If you feel more comfortable addressing specific images/pages then feel free to do so. In my opinion, I feel it is better to provide our overall opinion of the text rather than drill down into the minutiae. That said, I would feel otherwise if the text had been RC'd and we needed to justify a lower classification rating.

Anyway, now that we have a majority, I'd like to wrap things up. s47F, s47E(c) how are you travelling with a decision? Have you had a go at documenting your thoughts yet, or drafting a minority viewpoint? I've written a lengthy description of my thoughts regarding the panel on p135 that I am happy to forward to you if you think it might help? Just remember, whatever you write for the decision report, it needs to tie into context and intended audience. I know you'll get there, but shout if you need help.

Happy to organise another Teams meeting if need be, otherwise let's aim to have everything finalised by this Friday, if that suits.

s47F,
s47E(c)

From: s47F, s47E(c)
Sent: Wednesday, June 7, 2023 9:22 AM
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Draft report

Hello Team,

Thank you for kicking off a draft report, s47F, s47E(c). I have taken the liberty of making some suggested revisions on the attached (highlighted). A couple comment boxes, as well. Nothing concrete, just proposals.

I note that this currently isn't making any specific references to page numbers and the details of what is depicted in the publication. Is that because a CRB decision that effectively agrees with the original board

decision, isn't required to do so? Or is that level of specificity something that will still be expected of our report, given the nature of everything?

Thanks for clarifying.

s47F,
s47E(c)

On Tue, Jun 6, 2023 at 12:31 AM

s47F,
4 wrote:

Hello s47F, and s47F,
s47E(c) s47E(c)

Thank you again for a great discussion. We're certainly challenging each other with this one which (I hope) can only be a good thing.

As promised, here is the draft report I wrote yesterday. I have written it as a unanimous 'Unrestricted – Not recommended for readers under 15' decision, but this can obviously be changed if we land on a majority / minority result.

I'm really looking forward to hearing your thoughts.

As always, I'm here for whatever help and support you need so please do reach out anytime.

Talk soon,

s47F,
s47E(c)

From: s47F, s47E(c)
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Draft report
Date: Tuesday, 13 June 2023 10:36:03 PM

s47C,
s47E(c)

[Redacted content]

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s47C, s47E(c)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

On 12 Jun 2023, at 7:25 pm, s47F, s47E(c) wrote:

s47C, s47E(c)

[Redacted]

[Redacted]

[Redacted]

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s47C, s47E(c)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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s47C, s47E(c)

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s47C, s47E(c)

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s47C, s47E(c)

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Classification Review Board, Australian Classification

s47C, s47E(c)

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s47C, s47E(c)

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s47F, s47E(c), s47C

[Redacted]

Take care and we'll talk soon,

s47F, s47E(c) x

From: s47F, s47E(c)

Sent: Monday, June 12, 2023 12:32 PM

To: s47F, s47E(c)

Subject: Re: Draft report

s47F, s47E(c), s47C

[Redacted]

[Redacted]

[Redacted]

[Redacted]

s47F, s47E(c)

On 9 Jun 2023, at 6:27 pm, s47F, s47E(c) wrote:

s47F, s47E(c), s47C

[Redacted]

[Redacted]

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s47F, s47E(c), s47C

[Redacted text block 1]

[Redacted text block 2]

[Redacted text block 3]

[Redacted text block 4]

[Redacted text block 5]

[Redacted text block 6]

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s47C, s47E(c)

[Redacted text block]

I'm looking forward to reading your notes and listening to more of your thoughts on the book. I am free all evening and tomorrow morning, as well as Sunday and Monday, although I understand if you want to take some time to consider the above.

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Take care and we'll talk soon,

s47F,
s47E(c)

From: s47F, s47E(c)
Sent: Friday, June 9, 2023 1:40 PM
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Draft report

Happy to send through, although I suggest I speak to these. I have a meeting this afternoon and will check if I can move it and will come back to you.

Talk soon.

s47F, s47E(c)

On 9 Jun 2023, at 1:28 pm, s47F, s47E(c)
s47F, s47E(c) wrote:

s47F,
s47E(c),
s47C

[Redacted]

[Redacted]

s47F,
s47E(c)

Sent from [Outlook for Android](#)

From: s47F, s47E(c)
s47F, s47E(c)
Sent: Friday, June 9, 2023 1:18:52 pm
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Draft report

Dear s47F, s47F.

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I am sending the below through in preparation for finalising the review.

s47C
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

I have a page of notes explaining the above decision, which I can speak to.

Thanks,

On 7 Jun 2023, at 10:20 am, s47F, s47E(c)
s47F, s47E(c) wrote:

Thanks for the prompt reply!

I do think it is (intentionally) violent imagery, but accept that it fits under themes. Not a deal breaker either way, as it's not a key element in the classification decision. I guess I was just trying to 'tick the boxes' and ensure we have covered everything.

Re: 'conceit' - yep, bin it. Could i suggest

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this instead?

p.4 Descriptions and depictions of sex are justifiably interlinked with the publication's central **thematic premise** of a memoir recounting how the author struggled to make sense of gender identity and sexuality.

p.5 It **establishes** that the content represents the author's recollections of lived experiences at different stages of the author's life.

Re: level of specificity, I thought that was the case. Just wasn't sure there were any kinds of extraordinary expectation attached to this one. And the possibility of being called upon to explain or justify. I guess that's what notes are for!

s47F,
s47E(c)

On Wed, Jun 7, 2023 at 10:00 AM

s47F, s47E(c) wrote:

Hi, s47F,
s47E(c)

I hope you are feeling better.

Thanks so much for this. The only thing I disagree with is the inclusion of violence in the text. Are you referring to the images on p128-129 depicting Maia feeling like she had been stabbed? I wouldn't classify this as violence, but themes.

No, we don't need to include the full the blurb (top of page 4).

I wouldn't use the word 'conceit' to describe the literary device. I think 'conceit' (even though you are using it correctly here) can be too easily misinterpreted as excessive pride, vanity, narcissism, arrogance, etc. I'd rather use 'container' or 'literary device' or 'central themes' or 'context' (for example).

Happy to delete the last paragraph under '7. Reasons for the decision'.

As for your question about referring to specific images/pages, etc, no we don't need to go into that much detail, unless we want to. (If you think back to previous CRB reports, we don't normally do this.) If you feel more comfortable addressing specific images/pages then feel free to do so. In my opinion, I feel it is better to provide our overall opinion of the text rather than drill down into the minutiae. That said, I would feel otherwise if the text had been RC'd and we needed to justify a lower classification rating.

Anyway, now that we have a majority, I'd like to wrap things up. s47F, s47E(c) how are you travelling with a decision? Have you had a go at documenting your thoughts yet, or drafting a minority viewpoint? I've written a lengthy description of my thoughts regarding the panel on p135 that I am happy to forward to you if you think it might help? Just remember, whatever you write for the decision report, it needs to tie into context and intended audience. I know you'll get there, but shout if you need help.

Happy to organise another Teams meeting if need be, otherwise let's aim to have everything finalised by this Friday, if that suits.

s47F,
s47E(c)

From: s47F, s47E(c)
s47F, s47E(c)
Sent: Wednesday, June 7, 2023 9:22 AM
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Draft report

Hello Team,

Thank you for kicking off a draft report,

s47F, s47E(c) I have taken the liberty of making some suggested revisions on the attached (highlighted). A couple comment boxes, as well. Nothing concrete, just proposals.

I note that this currently isn't making any specific references to page numbers and the details of what is depicted in the publication. Is that because a CRB decision that effectively agrees with the original board decision, isn't required to do so? Or is that level of specificity something that will still be expected of our report, given the nature of everything?

Thanks for clarifying.

s47F,
s47E(c)

On Tue, Jun 6, 2023 at 12:31 AM

s47F, s47E(c) wrote:

Hello s47F, s47E(c) and s47F, s47E(c)

Thank you again for a great discussion. We're certainly challenging each other with this one which (I hope) can only be a good thing.

As promised, here is the draft report I wrote yesterday. I have written it as a unanimous 'Unrestricted – Not recommended for readers under 15' decision, but this can obviously be changed if we land on a majority / minority result.

I'm really looking forward to hearing your thoughts.

As always, I'm here for whatever help and support you need so please do reach out anytime.

Talk soon,

|| s47F,
|| s47E(c)

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From: s47F, s47E(c)
Subject: RE: Draft report
Date: 14 Jun 2023 at 7:52:25 am
To: s47F, s47E(c)
s47F, s47E(c)

s47C, s47E(c)

[Redacted text block]

s4 (c)

[Redacted text block]

[Redacted text block]

s4 (c)

[Redacted text block]

[Redacted text block]

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s47C, s47E(c)

[Redacted]

[Redacted] s4 (c) s4 (c)

Have a lovely day,

s47F, s47E(c)

From: s47F, s47E(c)

Sent: Tuesday, June 13, 2023 10:36 PM

To: s47F, s47E(c)

Cc: s47F, s47E(c)

Subject: Re: Draft report

s47C, s47E(c)

s4 E(c)

[Redacted]

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s47C, s47E(c)

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

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I too wish for this to be wrapped up and am hoping you are available tomorrow to finalise?
s22(1)(a)(ii) would you be free for a telephone chat around lunchtime so that we can have this resolved earlier than later? Otherwise, I will be free again after 7pm.

Thanks s47F, s47E(c).

s47F, s47E(c)

On 12 Jun 2023, at 7:25 pm, s47F, s47E(c) wrote:

s47C, s47E(c)

[Redacted text block]

s4 (c)

[Redacted text block]

[Redacted text block]

[Redacted text block]

s47C, s47E(c)

[Redacted text block]

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s47C, s47E(c)

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

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s47C, s47E(c)

[Redacted text block]

[Redacted text block]

[Redacted text block]

s47C

[Redacted text block]

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s47C, s47E(c)

[Redacted text block]

[Redacted text block]

[Redacted text block]

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s47C, s47E(c)

[Redacted text block]

[Redacted text block]

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s47C, s47E(c)

[Redacted]

[Redacted]

[Redacted]

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s47C, s47E(c)

[Redacted text block]

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Classification Review Board, Australian Classification

s47F, s47E(c) [Redacted]

Take care and we'll talk soon,

s47F, s47E(c) X

From: s47F, s47E(c) s47F, s47E(c)
Sent: Monday, June 12, 2023 12:32 PM
To: s47F, s47E(c)
Subject: Re: Draft report

s47C, s47E(c)
s4 (c) [Redacted]

[Redacted]

[Redacted]

s47F, s47E(c) [Redacted]

On 9 Jun 2023, at 6:27 pm, s47F, s47E(c) wrote:

s47C, s47E(c)

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

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s47C, s47E(c)

[Redacted text block]

[Redacted text block]

[Redacted text block]

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s47C, s47E(c)

Take care and we'll talk soon,

s47F,

From: s47F, s47E(c)

Sent: Friday, June 9, 2023 1:40 PM

To: s47F, s47E(c)

Cc: s47F, s47E(c)

Subject: Re: Draft report

Happy to send through, although I suggest I speak to these. I have a meeting this afternoon and will check if I can move it and will come back to you.

Talk soon.

s47F, s47E(c)

On 9 Jun 2023, at 1:28 pm, s47F, s47E(c) wrote:

Hi, s47F,

Thanks for sending this through. Did you want to forward your notes? Or organise another chat? It sounds like you still haven't made a firm decision so we should try and help you get there.

I'm free this afternoon after 3pm if that helps.

s47F,

Sent from [Outlook for Android](#)

From: s47F, s47E(c)

Sent: Friday, June 9, 2023 1:18:52 pm

To: s47F, s47E(c)

Cc: s47F, s47E(c)

Subject: Re: Draft report

Dear s47F, s47F,

I am sending the below through in preparation for finalising the review.

s47C
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

I have a page of notes explaining the above decision, which I can speak to.

Thanks,

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On 7 Jun 2023, at 10:20 am, s47F, s47E(c) wrote:

Thanks for the prompt reply!

I do think it is (intentionally) violent imagery, but accept that it fits under themes. Not a deal breaker either way, as it's not a key element in the classification decision. I guess I was just trying to 'tick the boxes' and ensure we have covered everything.

Re: 'conceit' - yep, bin it. Could i suggest this instead?

p.4 Descriptions and depictions of sex are justifiably interlinked with the publication's central **thematic premise** of a memoir recounting how the author struggled to make sense of gender identity and sexuality.

p.5 It **establishes** that the content represents the author's recollections of lived experiences at different stages of the author's life.

Re: level of specificity, I thought that was the case. Just wasn't sure there were any kinds of extraordinary expectation attached to this one. And the possibility of being called upon to explain or justify. I guess that's what notes are for!

s47F,
s47E(c)

On Wed, Jun 7, 2023 at 10:00 AM s47F, s47E(c) wrote:

Hi, s47F,
s47E(c)

I hope you are feeling better.

Thanks so much for this. The only thing I disagree with is the inclusion of violence in the text. Are you referring to the images on p128-129 depicting Maia feeling like she had been stabbed? I wouldn't classify this as violence, but themes.

No, we don't need to include the full the blurb (top of page 4).

I wouldn't use the word 'conceit' to describe the literary device. I think 'conceit' (even though you are using it correctly here) can be too easily misinterpreted as excessive pride, vanity, narcissism, arrogance, etc. I'd rather use 'container' or 'literary device' or 'central themes' or 'context' (for example).

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Anyway, now that we have a majority, I'd like to wrap things up. s47F, s47E(c), how are you travelling with a decision? Have you had a go at documenting your thoughts yet, or drafting a minority viewpoint? I've written a lengthy description of my thoughts regarding the panel on p135 that I am happy to forward to you if you think it might help? Just remember, whatever you write for the decision report, it needs to tie into context and intended audience. I know you'll get there, but shout if you need help.

Happy to organise another Teams meeting if need be, otherwise let's aim to have everything finalised by this Friday, if that suits.

s47F,
s47E(c)

From: s47F, s47E(c)
Sent: Wednesday, June 7, 2023 9:22 AM
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Draft report

Hello Team,

Thank you for kicking off a draft report, s47F, s47E(c). I have taken the liberty of making some suggested revisions on the attached (highlighted). A couple comment boxes, as well. Nothing concrete, just proposals.

I note that this currently isn't making any specific references to page numbers and the details of what is depicted in the publication. Is that because a CRB decision that effectively agrees with the original board decision, isn't required to do so? Or is that level of specificity something that will still be expected of our report, given the nature of everything?

Thanks for clarifying.

s47F,
s47E(c)

On Tue, Jun 6, 2023 at 12:31 AM s47F, s47E(c) wrote:

Hello s47F, s47E(c) and s47F, s47E(c)

Thank you again for a great discussion. We're certainly challenging each other with this one which (I hope) can only be a good thing.

As promised, here is the draft report I wrote yesterday. I have written it as a unanimous 'Unrestricted – Not recommended for readers under 15' decision, but this can obviously be changed if we land on a majority / minority result.

I'm really looking forward to hearing your thoughts.

As always, I'm here for whatever help and support you need so please do reach out anytime.

Talk soon,

s47F,
s47E(c)

From: s47F, s47E(c)
To: s47F, s47E(c)
Cc: s47F, s47E(c); s47F, s47E(c)
Subject: Re: Draft report
Date: Friday, 16 June 2023 1:36:05 PM

Good afternoon,

Thank you for the below. s47C, s47E(c)

s47F, s47E(c), I had tried again this morning and just now to reach s47F, s47E(c) as I mentioned yesterday however it is going to voicemail.

I am happy to attend a meeting, although won't be available until after 4.30pm now today (and I imagine you are both similar). Monday is very flexible at this stage after 9am. It may not be necessary, as I am grateful for your commentary below s47C, s47E(c)

[Redacted]

On 16 Jun 2023, at 9:17 am, s47F, s47E(c) wrote:

s47C, s47E(c)

[Redacted]

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Let me know if this is of interest and when you are free.

Talk soon!

s47F,
s47E(c)

From: s47F, s47E(c)

Sent: Friday, June 16, 2023 9:07 AM

To: s47F, s47E(c)

Cc: s47F, s47E(c) s47F, s47E(c)

Subject: Re: Draft report

s47C, s47E(c)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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s47C, s47E(c)
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Kind regards,

s47F,
s47E(c)

On Fri, Jun 16, 2023 at 8:13 AM s47F, s47E(c) wrote:

Thanks s47F,
s47E(c)

How are you going with landing on a decision? Did you want me to set up another meeting between the 3 of us to talk through any of your notes?

s4
7F

From: s47F, s47E(c)
Sent: Friday, June 16, 2023 8:00 AM
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Draft report

s47C

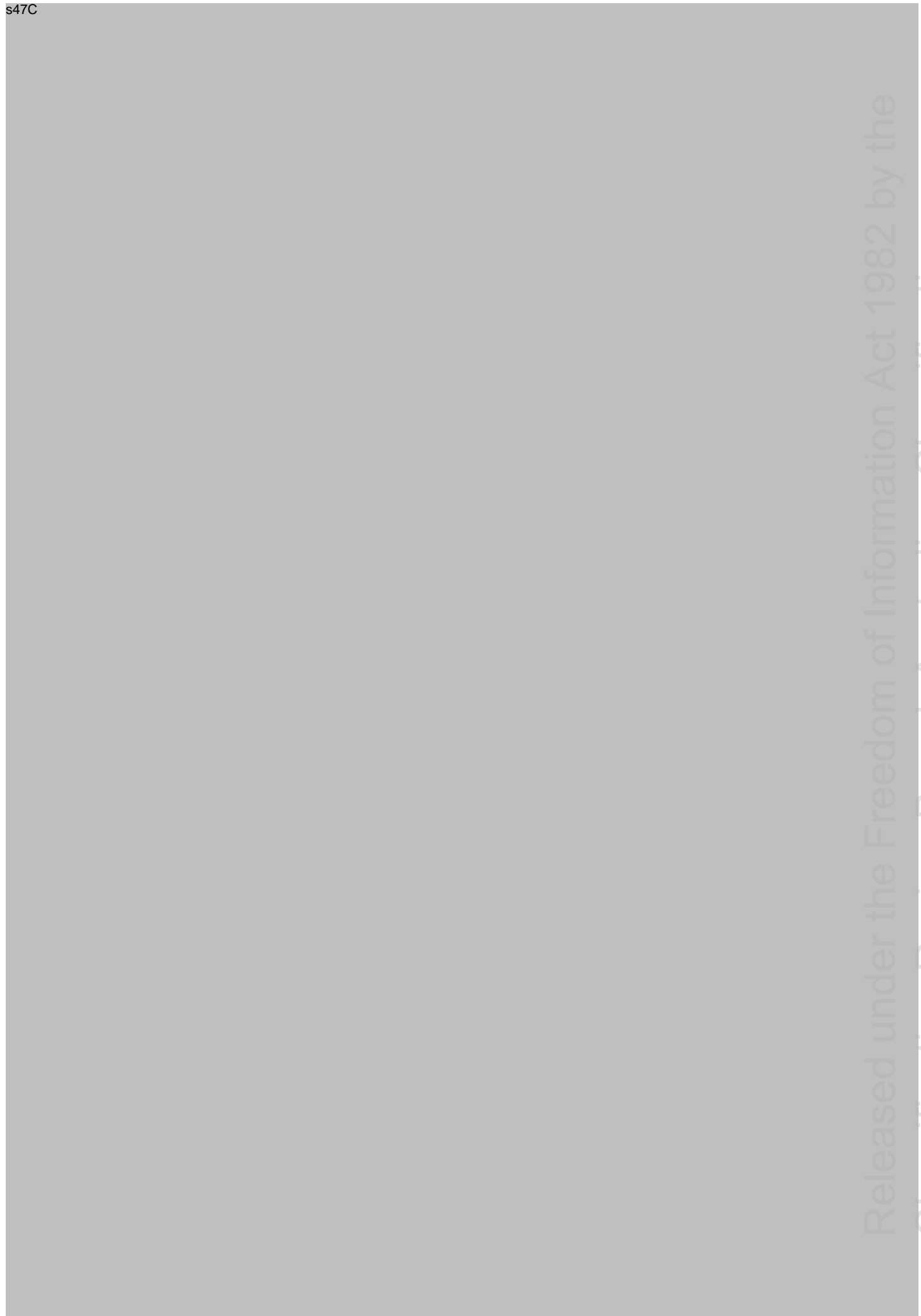
[Redacted]
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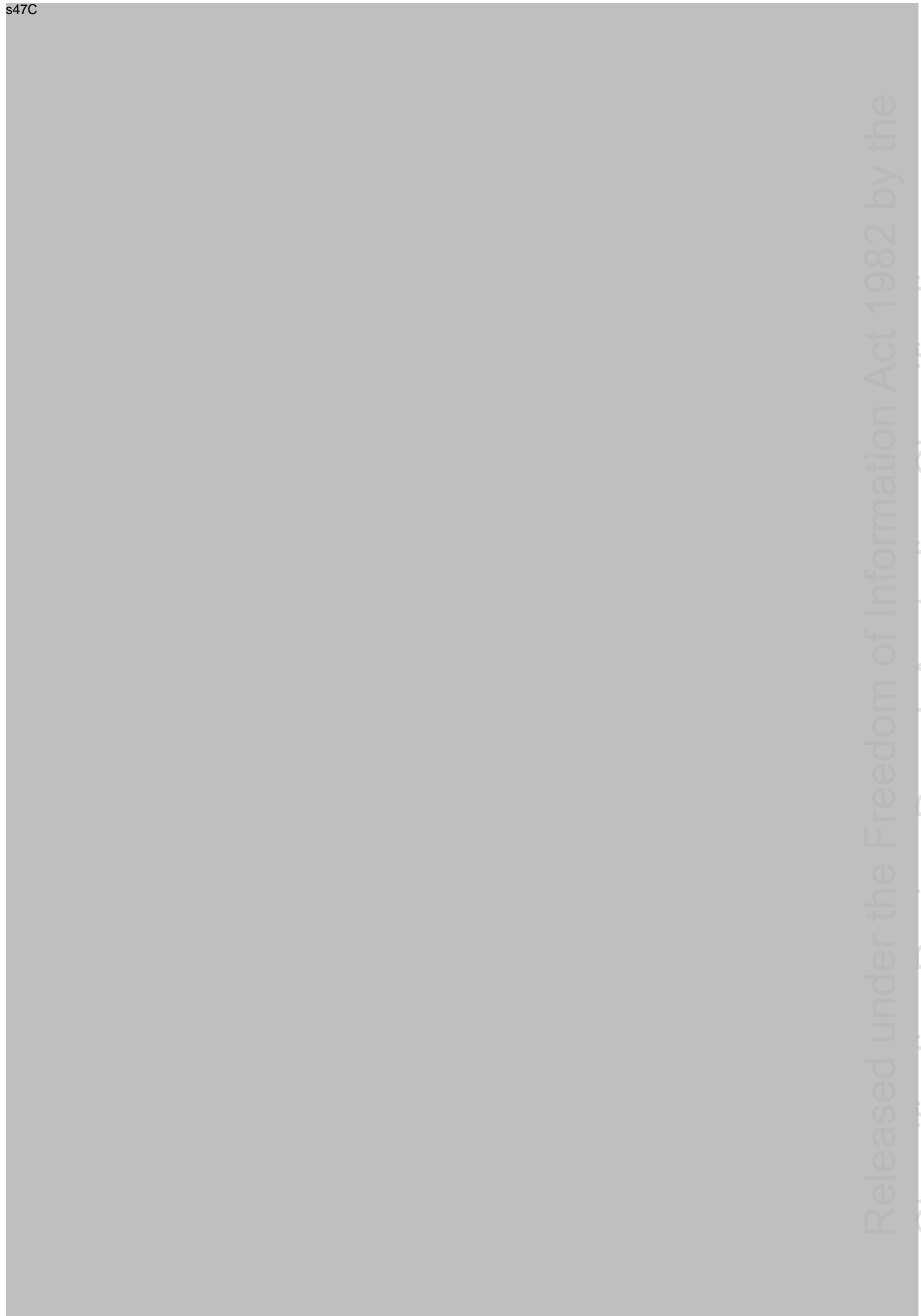
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Classification Review Board, Australian Classification

s47C



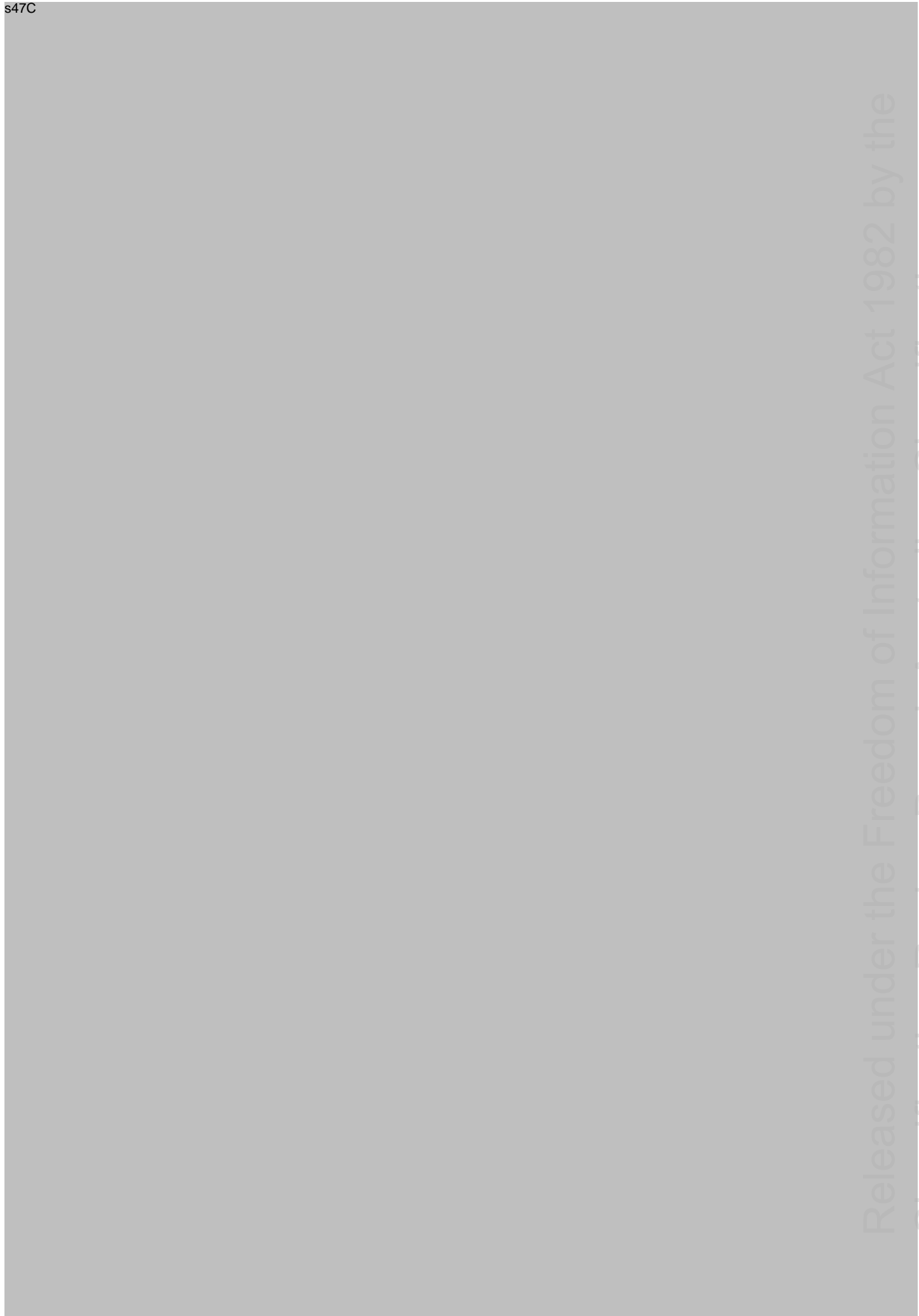
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s47C



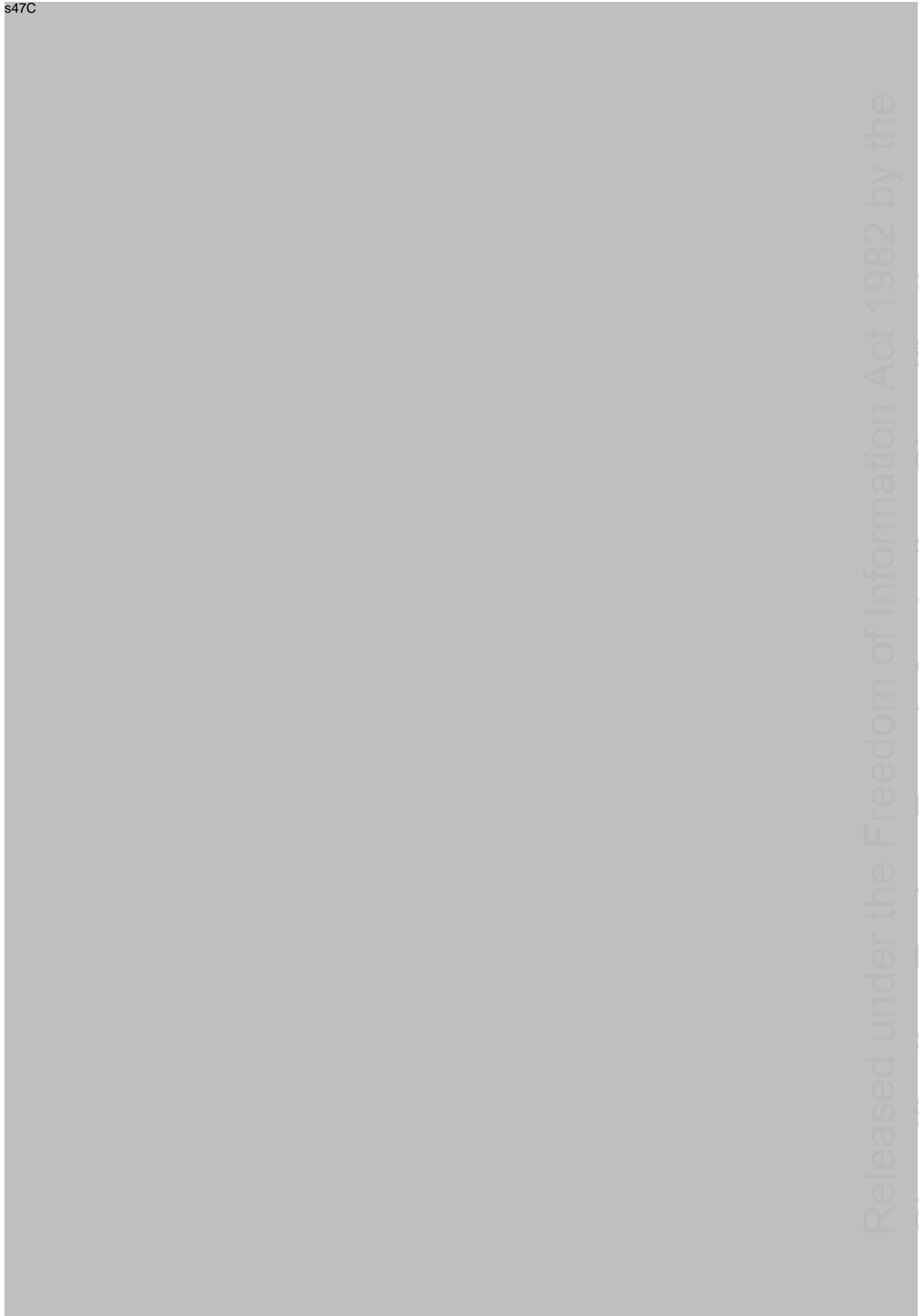
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s47C



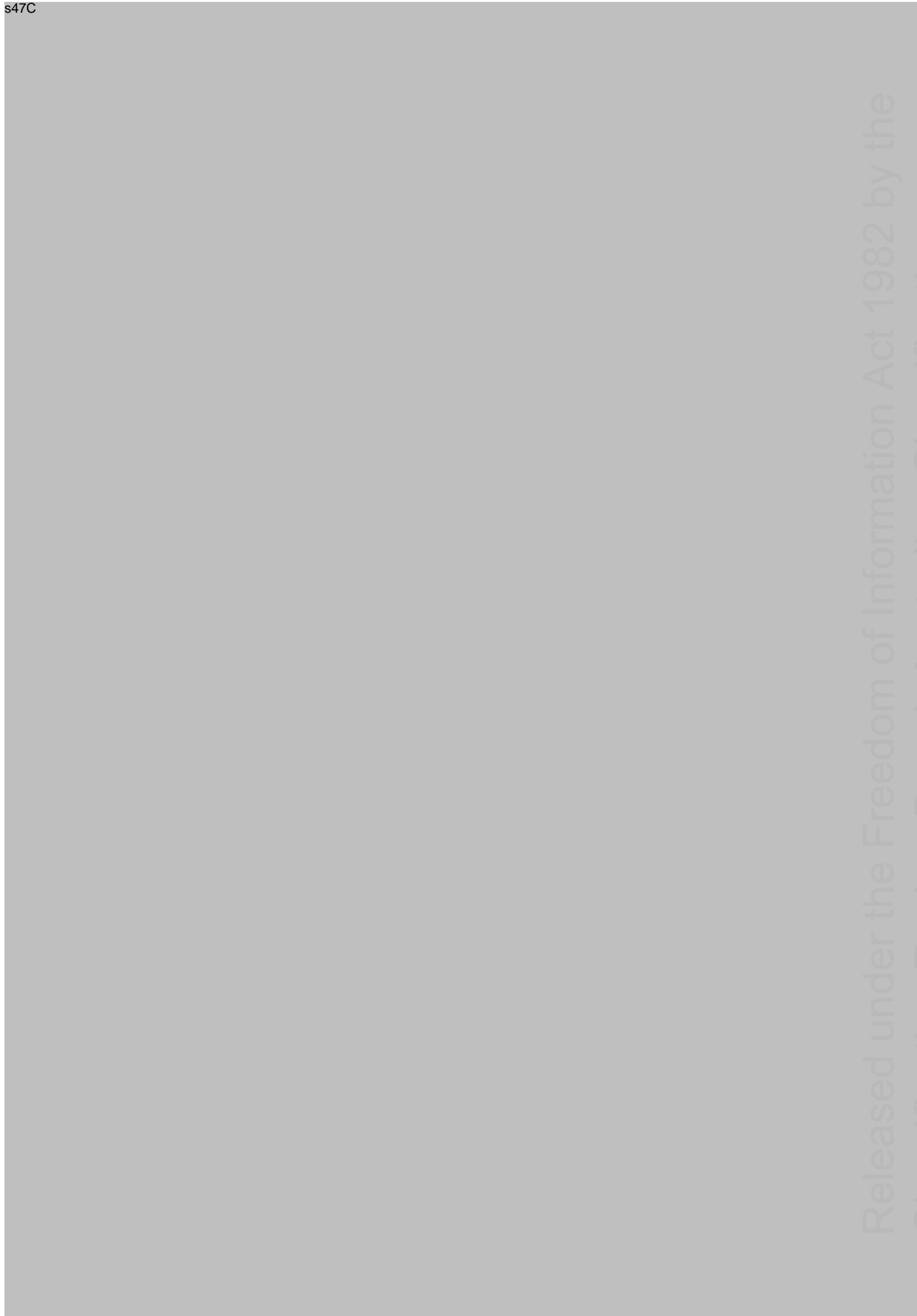
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s47C



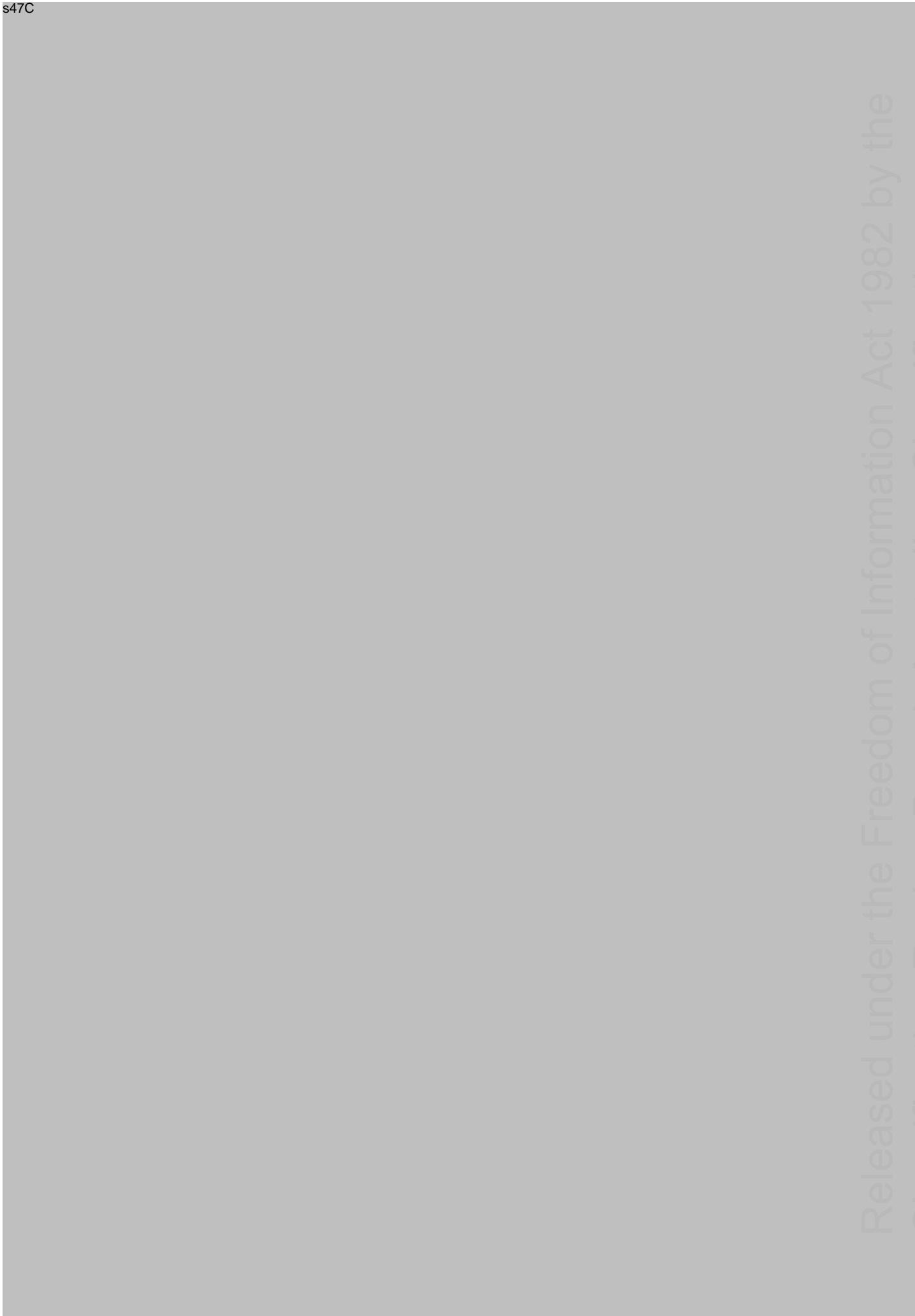
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s47C



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s47C



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From: s47F, s47E(c)
To: s47F, s47E(c) s47F,
Cc: s47F, s47F, s47E(c))
Subject: RE: Final draft report
Date: Sunday, 18 June 2023 1:00:12 PM

Actually, a correction below (we don't classify as RC – this means that the game/book/film is being refused a classification)

From: s47F, s47E(c)
Sent: Sunday, June 18, 2023 12:54 PM
To: s47F, s47E(c) s47F, s47E(c)
s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: RE: Final draft report

Hi, s47F, s47E(c)

Thanks for this.

It isn't necessary to provide an in-depth description about the panel image on p135 because the classification is for the *whole book*. All you need to do is put something akin to the following:

s47C
[Redacted text block containing multiple lines of greyed-out content]

Let me know if you need help

s4
7F

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From: s47F, s47E(c)
Sent: Sunday, June 18, 2023 12:07 PM
To: s47F, s47E(c)
Cc: s47F, s47E(c) s47F, s47E(c)
Subject: Re: Final draft report

Apologies, please find attached.

At 12:05 pm on 18 Jun 2023, s47F, s47E(c) wrote:

Good morning to you both,

I attach a draft update s47F, s47E(c) with the proposed minority decision.

Having reviewed the examples provided from previous publication decisions, I note the Board reports are more detailed in reference to specific page examples, whereas the Review Board reports don't contain the same specificity. Nonetheless, in the event it is required, I have included a draft second detailed paragraph. Please let me know if this can be removed, or requires amendment.

Thank you.

At 10:40 am on 18 Jun 2023, s47F, s47E(c) wrote:

Thank you for your work on this one s47F, s47E(c). I confirm I am happy with the wording of this version of the report.

With much appreciation,

s47F,
s47E(c)

On Sat, 17 June 2023, 7:47 am, s47F, s47E(c) wrote:

Morning!

Attached is the most recent updated version of the Decision Report. Please let me know by Sunday evening if there is anything you would like to add/amend before I forward it to the Branch on Monday morning. I appreciate it is the weekend, but I am also conscious that our deadline is next Thursday, and we still need to get the report to Legal for their perusal and have time to discuss/incorporate any feedback they might have.

Thank you for the very hard work you have put into this review. You

have both gone above and beyond and for that I am grateful.

Kindest,
s47F,
s47E(c)

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Australian Government
Classification Review Board

Date: 29 May 2023

Applicant: Bernard Gaynor

Interested parties: See Appendix A

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

2. Legislative provisions

The *Classification (Publications, Computer game and Computer Games) Act 1995* (Cth) (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:

Field Code Changed

1. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

- 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

Three members of the Review Board met on 29 May 2023, in response to the receipt of an application from Bernard Gaynor on 5 May 2023, to conduct the classification review of the publication, *Gender Queer*, which had previously been classified **Unrestricted** with consumer advice of '**M – Not recommended for readers under 15 years**' by the Classification Board. The Review Board determined that the application was a valid application.

The Review Board was provided a written submission from the Applicant.

The Review Board read the publication.

The Review Board was provided written submissions from the interested parties listed in Appendix A.

The Review Board heard an oral submission from the Applicant.

The Review Board heard an oral submission from a representative of the Australian Library and Information Association.

The Review Board then considered the matter.

Field Code Changed

2. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

4. Evidence and other material taken into account

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

- (i) Bernard Gaynor's application for review
- (ii) Bernard Gaynor's written and oral submissions
- (iii) The written and oral submissions of interested parties
- (iv) The publication, *Gender Queer*
- (v) The relevant provisions in the Classification Act, the Code and the Guidelines, and
- (vi) The Classification Board's report.

5. Synopsis

Gender Queer is an autobiographical non-fiction graphic memoir, written by Maia Kobabe, that explores the author's path to identifying as nonbinary and asexual. This 240-page edition was published in 2020 by Oni-Lion Forge Publishing Group.

6. Findings on material questions of fact

The Review Board 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 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 describes the focus of the publication with the following statement: "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."

The Review Board found that the publication contains aspects or depictions of importance under various classifiable elements:

- (a) Themes—the publication details the author's journey toward identifying as nonbinary and asexual. The exploration of these themes is clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, rear cover, and spine; the illustration on the front cover; and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (b) Violence—not present in the publication.
- (c) Sex—there is a pervasive narrative element of sex throughout the publication that is consistently mitigated by multiple contributing factors:

Field Code Changed

3. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

Descriptions and depictions of sex are justifiably interlinked with the publication's central premise of a memoir recounting how the author struggled to make sense of gender identity and sexuality.

Descriptions and depictions of sex are highly stylised and contain little or no realistic detail.

Descriptions and depictions of, and references to, sexual activity involving consenting adults is not exploitative, or gratuitous.

The presence of sex and nudity in the publication is justified in context, specifically that of being a non-fiction memoir describing the author's lived experience.

Sex and nudity are justifiably interlinked with the publication's core themes of gender identity and asexuality. These themes are clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, the illustration on the front cover, and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (d) Language—the publication contains infrequent strong coarse language, some of which is used with sexual connotations that are justified by context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (e) Drug Use—not present in the publication.

- (f) Nudity—the publication contains infrequent depictions of male and female nudity, including full-frontal nudity. These depictions are highly stylised, lacking in detail, and are justified in context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

7. Reasons for the decision

The publication is an autobiographical memoir, as indicated by the front and rear covers, and the statement on the title page that reads, 'This is a work of non-fiction'. The publication contains recollections of the author's lived experiences presented using the visual style of a graphic novel.

The publication contains highly stylised depictions of classifiable elements that are consistently justified by context and appropriate for its intended audience. The Review Board recognises that the intended audience for this publication are readers interested in the author, and/or interested in the publication's central themes of gender identity and asexuality.

The publication contains highly stylised depictions of nudity and sex that, when considered within the broader context of the publication, are no higher than moderate in impact, and are not exploitative, offensive, gratuitous, or very detailed.

Given the context of the publication, the character of the publication, its recognised literary and educational merit, and the likely intended audience of the publication, the majority of the Review Board considers the treatment of the classifiable elements to be no higher than moderate in impact, and not depicted in such a way that they offend against the standards of morality, decency, and propriety generally accepted by reasonable adults to the extent that this publication should be legally restricted.

Field Code Changed

4. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

s47C, s47E(c)

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8. Summary

Pursuant to the Guidelines, the impact of the classifiable elements in the publication is no higher than moderate. However, the Review Board recognises that some content with this publication may offend some sections of the adult community and may not be suitable for younger readers. It is therefore the unanimous view of the Review Board that the publication warrants a classification of: **Unrestricted** with the consumer advice of **'M – Not recommended for readers under 15 years'**. This consumer advice does not constitute a legal restriction.

Field Code Changed

5. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

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9. Appendix A-Names of interested parties

-
6. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

Field Code Changed

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Classification Review Board, Australian Classification

From: s47F, s47E(c)
To: s47F, s47E(c)
Cc: s47F, ; s47F,
Subject: Re: Final draft report
Date: Sunday, 18 June 2023 7:36:14 PM

Thanks s47F, s47E(c).

What are your thoughts on the omission of the sexualised nudity wording given its relevance to 1b. Do you think this will be too vague if we don't include it? Or is there merit in the omission?

I am comfortable with either option and guided by you on this.

Thanks.

s47F, s47E(c)

On 18 Jun 2023, at 5:41 pm, s47F, s47E(c) wrote:

I'd prefer:

s47C
[Redacted text block]

s47F

From: s47F, s47E(c)
Sent: Sunday, June 18, 2023 4:42 PM
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Final draft report

Hi team,

How would we feel about this wording? I've tried to word this in such a way as to capture your position s47F, s47E(c), whilst in keeping with the tone of the majority report. This is just a suggestion - thought it might be helpful as we hit the last leg of the race.

Cheers

s47F, s47E(c)

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Classification Review Board, Australian Classification

s47C
[Redacted]

On Sun, 18 June 2023, 4:01 pm s47F, s47E(c),
s47F, s47E(c) wrote:

Hi s47F,
s47E(c),

Thank you for your guidance, this is much clearer. Please see the attached. I am free to make any revisions this evening so you have it for tomorrow.

Thanks,

On 18 Jun 2023, at 1:00 pm, s47F, s47E(c)
s47F, s47E(c) wrote:

s47C
[Redacted]

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Classification Review Board, Australian Classification



Australian Government
Classification Review Board

Date: 29 May 2023

Applicant: Bernard Gaynor

Interested parties: See Appendix A

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

2. Legislative provisions

The *Classification (Publications, Computer game and Computer Games) Act 1995* (Cth) (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:

Field Code Changed

1. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

- 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

Three members of the Review Board met on 29 May 2023, in response to the receipt of an application from Bernard Gaynor on 5 May 2023, to conduct the classification review of the publication, *Gender Queer*, which had previously been classified **Unrestricted** with consumer advice of '**M – Not recommended for readers under 15 years**' by the Classification Board. The Review Board determined that the application was a valid application.

The Review Board was provided a written submission from the Applicant.

The Review Board read the publication.

The Review Board was provided written submissions from the interested parties listed in Appendix A.

The Review Board heard an oral submission from the Applicant.

The Review Board heard an oral submission from a representative of the Australian Library and Information Association.

The Review Board then considered the matter.

Field Code Changed

2. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

4. Evidence and other material taken into account

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

- (i) Bernard Gaynor's application for review
- (ii) Bernard Gaynor's written and oral submissions
- (iii) The written and oral submissions of interested parties
- (iv) The publication, *Gender Queer*
- (v) The relevant provisions in the Classification Act, the Code and the Guidelines, and
- (vi) The Classification Board's report.

5. Synopsis

Gender Queer is an autobiographical non-fiction graphic memoir, written by Maia Kobabe, that explores the author's path to identifying as nonbinary and asexual. This 240-page edition was published in 2020 by Oni-Lion Forge Publishing Group.

6. Findings on material questions of fact

The Review Board 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 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 describes the focus of the publication with the following statement: "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."

The Review Board found that the publication contains aspects or depictions of importance under various classifiable elements:

- (a) Themes—the publication details the author's journey toward identifying as nonbinary and asexual. The exploration of these themes is clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, rear cover, and spine; the illustration on the front cover; and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (b) Violence—not present in the publication.
- (c) Sex—there is a pervasive narrative element of sex throughout the publication that is consistently mitigated by multiple contributing factors:

Field Code Changed

3. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

Descriptions and depictions of sex are justifiably interlinked with the publication's central premise of a memoir recounting how the author struggled to make sense of gender identity and sexuality.

Descriptions and depictions of sex are highly stylised and contain little or no realistic detail.

Descriptions and depictions of, and references to, sexual activity involving consenting adults is not exploitative, or gratuitous.

The presence of sex and nudity in the publication is justified in context, specifically that of being a non-fiction memoir describing the author's lived experience.

Sex and nudity are justifiably interlinked with the publication's core themes of gender identity and asexuality. These themes are clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, the illustration on the front cover, and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (d) Language—the publication contains infrequent strong coarse language, some of which is used with sexual connotations that are justified by context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (e) Drug Use—not present in the publication.

- (f) Nudity—the publication contains infrequent depictions of male and female nudity, including full-frontal nudity. These depictions are highly stylised, lacking in detail, and are justified in context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

7. Reasons for the decision

The publication is an autobiographical memoir, as indicated by the front and rear covers, and the statement on the title page that reads, 'This is a work of non-fiction'. The publication contains recollections of the author's lived experiences presented using the visual style of a graphic novel.

The publication contains highly stylised depictions of classifiable elements that are consistently justified by context and appropriate for its intended audience. The Review Board recognises that the intended audience for this publication are readers interested in the author, and/or interested in the publication's central themes of gender identity and asexuality.

The publication contains highly stylised depictions of nudity and sex that, when considered within the broader context of the publication, are no higher than moderate in impact, and are not exploitative, offensive, gratuitous, or very detailed.

Given the context of the publication, the character of the publication, its recognised literary and educational merit, and the likely intended audience of the publication, the majority of the Review Board considers the treatment of the classifiable elements to be no higher than moderate in impact, and not depicted in such a way that they offend against the standards of morality, decency, and propriety generally accepted by reasonable adults to the extent that this publication should be legally restricted.

Field Code Changed

4. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

s47C, s47E(c)

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8. Summary

Pursuant to the Guidelines, the impact of the classifiable elements in the publication is no higher than moderate. However, the Review Board recognises that some content with this publication may offend some sections of the adult community and may not be suitable for younger readers. It is therefore the unanimous view of the Review Board that the publication warrants a classification of: **Unrestricted** with the consumer advice of **'M – Not recommended for readers under 15 years'**. This consumer advice does not constitute a legal restriction.

Field Code Changed

5. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

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9. Appendix A-Names of interested parties

-
6. Review of Classification Board's decision to classify the publication *Gender Queer*
www.classification.gov.au

Field Code Changed

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Classification Review Board, Australian Classification

From: s47F, s47E(c)
To: s47F,
Cc: s47F, s47F,
Subject: Re: Final draft report
Date: Monday, 19 June 2023 7:26:35 AM

Thanks s47F, s47E(c). Hope you both have a nice Monday, s22(1)(a)(ii)

s47F, s47E(c)

On 19 Jun 2023, at 5:25 am, s47F, s47E(c) wrote:

Apologies for the delay.

Confirming that I am happy to proceed with amendments as suggested by s47F, s47E(c)

Thank you both.

s47F, s47E(c)

On Sun, 18 June 2023, 8:01 pm s47F, s47E(c) wrote:

No need to amend. I can do that before sending.

Sent from [Outlook for Android](#)

From: s47F, s47E(c)
Sent: Sunday, June 18, 2023 8:00:24 PM
To: s47F, s47E(c)
Cc: s47F, s47E(c) s47F, s47E(c)
Subject: Re: Final draft report

Ok, happy with that. Shall I amend on the word doc to your suggestion below? Or await s47F, s47E(c) response beforehand.

s47F, s47E(c)

On 18 Jun 2023, at 7:39 pm, s47F, s47E(c) wrote:

s47C

Sent from [Outlook for Android](#)

From: s47F, [REDACTED]
To: s47F, [REDACTED]
Cc: s47F, s47E(c) [REDACTED]
Subject: Re: Final draft report
Date: Sunday, 18 June 2023 10:40:43 AM

Thank you for your work on this one s47F, s47E(c). I confirm I am happy with the wording of this version of the report.

With much appreciation,

s47F,
s47E(c)

On Sat, 17 June 2023, 7:47 am, s47F, s47E(c) [REDACTED] wrote:

Morning!

Attached is the most recent updated version of the Decision Report. Please let me know by Sunday evening if there is anything you would like to add/amend before I forward it to the Branch on Monday morning. I appreciate it is the weekend, but I am also conscious that our deadline is next Thursday, s47C [REDACTED]

Thank you for the very hard work you have put into this review. You have both gone above and beyond and for that I am grateful.

Kindest,

s47F,
s47E(c)



Australian Government

Classification Review Board

Date:	29 May 2023
Applicant:	Bernard Gaynor
Interested parties:	See Appendix A
Business:	To review the Classification Board's decision to classify the publication <i>Gender Queer</i> , Unrestricted (M – Not recommended for readers under 15 years) .

Decision and reasons for decision

1. Decision

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

2. Legislative provisions

The *Classification (Publications, Computer game and Computer Games) Act 1995* (Cth) (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

Three members of the Review Board met on 29 May 2023, in response to the receipt of an application from Bernard Gaynor on 5 May 2023, to conduct the classification review of the publication, *Gender Queer*, which had previously been classified **Unrestricted** with consumer advice of **'M – Not recommended for readers under 15 years'** by the Classification Board. The Review Board determined that the application was a valid application.

The Review Board was provided a written submission from the Applicant.

The Review Board read the publication.

The Review Board was provided written submissions from the interested parties listed in Appendix A.

The Review Board heard an oral submission from the Applicant.

The Review Board heard an oral submission from a representative of the Australian Library and Information Association.

The Review Board then considered the matter.

4. Evidence and other material taken into account

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

- (i) Bernard Gaynor's application for review
- (ii) Bernard Gaynor's written and oral submissions
- (iii) The written and oral submissions of interested parties
- (iv) The publication, *Gender Queer*
- (v) The relevant provisions in the Classification Act, the Code and the Guidelines, and
- (vi) The Classification Board's report.

5. Synopsis

Gender Queer is an autobiographical non-fiction graphic memoir, written by Maia Kobabe, that explores the author's path to identifying as nonbinary and asexual. This 240-page edition was published in 2020 by Oni-Lion Forge Publishing Group.

6. Findings on material questions of fact

The Review Board 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 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 describes the focus of the publication with the following statement: "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."

The Review Board found that the publication contains aspects or depictions of importance under various classifiable elements:

- (a) Themes—the publication details the author's journey toward identifying as nonbinary and asexual. The exploration of these themes is clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, rear cover, and spine; the illustration on the front cover; and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (b) Violence—not present in the publication.
- (c) Sex—there is a pervasive narrative element of sex throughout the publication that is consistently mitigated by multiple contributing factors:

Descriptions and depictions of sex are justifiably interlinked with the publication's central premise of a memoir recounting how the author struggled to make sense of gender identity and sexuality.

Descriptions and depictions of sex are highly stylised and contain little or no realistic detail.

Descriptions and depictions of, and references to, sexual activity involving consenting adults is not exploitative, or gratuitous.

The presence of sex and nudity in the publication is justified in context, specifically that of being a non-fiction memoir describing the author's lived experience.

Sex and nudity are justifiably interlinked with the publication's core themes of gender identity and asexuality. These themes are clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, the illustration on the front cover, and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (d) Language—the publication contains infrequent strong coarse language, some of which is used with sexual connotations that are justified by context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (e) Drug Use—not present in the publication.

- (f) Nudity—the publication contains infrequent depictions of male and female nudity, including full-frontal nudity. These depictions are highly stylised, lacking in detail, and are justified in context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

7. Reasons for the decision

The publication is an autobiographical memoir, as indicated by the front and rear covers, and the statement on the title page that reads, 'This is a work of non-fiction'. The publication contains recollections of the author's lived experiences presented using the visual style of a graphic novel.

The publication contains highly stylised depictions of classifiable elements that are consistently justified by context and appropriate for its intended audience. The Review Board recognises that the intended audience for this publication are readers interested in the author, and/or interested in the publication's central themes of gender identity and asexuality.

The publication contains highly stylised depictions of nudity and sex that, when considered within the broader context of the publication, are no higher than moderate in impact, and are not exploitative, offensive, gratuitous, or very detailed.

Given the context of the publication, the character of the publication, its recognised literary and educational merit, and the likely intended audience of the publication, the Review Board considers the treatment of the classifiable elements to be no higher than moderate in impact, and not depicted in such a way that they offend against the standards of morality, decency, and propriety generally accepted by reasonable adults to the extent that this publication should be legally restricted.

8. Summary

Pursuant to the Guidelines, the impact of the classifiable elements in the publication is no higher than moderate. However, the Review Board recognises that some content with this publication may offend some sections of the adult community and may not be suitable for younger readers. It is therefore the unanimous view of the Review Board that the publication warrants a classification of: **Unrestricted** with the consumer advice of '**M – Not recommended for readers under 15 years**'. This consumer advice does not constitute a legal restriction.

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Classification Review Board, Australian Classification

9. Appendix A-Names of interested parties

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Classification Review Board, Australian Classification

From: s47F,
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: RE: Request for extension for Gender Queer decision [SEC=OFFICIAL]
Date: Tuesday, 20 June 2023 5:28:54 PM
Attachments: [image001.png](#)

OFFICIAL

Good Afternoon s47F,
s47E(c)

Thank you for your email and notification of your assessment that the application to be sufficiently complex under s87B of the Act and r 21 of the Regulations.

The Department is of the view that as Convenor, you can consider the application to be sufficiently complex (in accordance with the requirements of s87B of the Act and r 21 of the Regulations) and that the review is not likely to be completed within 20 business days. This extends the period within which the Review Board is to make a decision to 40 business days.

I recommend you inform the applicant of this fact, and of the timeframe within which they can expect a decision. The Branch can assist with drafting a letter to this effect.

Cheers

s47F,
s47E(c)

s47F,
 s47E(c)
 A/g Director • Classification Branch • Online Safety, Media and Platforms Division
 s47F, s47E(c) [@infrastructure.gov.au](mailto:s47F, s47E(c)@infrastructure.gov.au)
 p s47F, s47E(c)

Level 6, 23-33 Mary St, Surry Hills 2010
 GPO Box 594 Canberra, ACT 2601

Department of Infrastructure, Transport, Regional Development, Communications
CONNECTING AUSTRALIANS • ENRICHING COMMUNITIES • EMPOWERING REGIONS

infrastructure.gov.au



*I would like to acknowledge the traditional custodians of this land on which we meet, work and live.
 I recognise and respect their continuing connection to the land, waters and communities,
 I pay my respects to Elders past and present and to all Aboriginal and Torres Strait Islanders.*

OFFICIAL

From: s47F, s47E(c)
Sent: Monday, 19 June 2023 4:24 PM
To: s47F, s47E(c) <[s47F, s47E\(c\)@INFRASTRUCTURE.gov.au](mailto:s47F, s47E(c)@INFRASTRUCTURE.gov.au)>

Cc: s47F, s47E(c) @classification.gov.au>; s47F, s47E(c)
 s47F, s47E(c) @classification.gov.au>
Subject: Request for extension for Gender Queer decision

Hi, s47F,
 s47E(c)

Thank you for meeting with me earlier.

As discussed, I would like to request an extension of a further 20 business days to allow the Review Board to continue considering the application for *Gender Queer*. As per section 21 (1) of the regulations and 87 (b) of the Act, I consider the application to be sufficiently complex to warrant an extension to a total of 40 business days. Additionally, as per section 21 (2)(e) of the regulations, I have agreed to accept submissions from a person other than the original applicant.

If my request is approved, I understand that the Review Board's deadline to reach a decision will be 20 July 2023.

Kind regards,

s47F, s47E(c)

s47F, s47E(c) Classification Review Board
 s47F, s47E(c)

Disclaimer

This message has been issued by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts. The information transmitted is for the use of the intended recipient only and may contain confidential and/or legally privileged material. Any review, re-transmission, disclosure, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited and may result in severe penalties. If you have received this e-mail in error, please notify the Department on +61 (2) 6274 7111 and delete all copies of this transmission together with any attachments.

From: s47F, s47E(c)
To: s47F,
Cc: s47F, ; s47F, s47E(c)
Subject: Re: Deadline extension
Date: Wednesday, 21 June 2023 11:34:24 AM

Thank you for the update s47F,
s47E(c)

s47F, s47E(c)

On 21 Jun 2023, at 11:14 am, s47F, s47E(c) wrote:

Hi, s47F, s47E(c) and s47F, s47E(c)

s42 . I have subsequently arranged for a deadline extension of a further 20 days so that we do not miss tomorrow's deadline.

Kind regards
s47F,
s47E(c)

Sent from [Outlook for Android](#)

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From: s47F, s47E(c)
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Final report - CONFIDENTIAL
Date: Wednesday, 5 July 2023 3:18:07 PM
Attachments: [CRB Decision - Gender Queer - FINAL DRAFT.docx](#)

Hi, s47F, s47E(c) and s47F, s47E(c)

s42

I have attached the Final Draft to this email with the minority viewpoint removed. If there is anything you would like to add to the majority decision, especially regarding our reasons for decision and the impact of the classifiable elements, then please add your suggestions and return to me asap.

I'm away this evening and tomorrow but will still be contactable via email.

Thank you again for your patience,

s47F, s47E(c)

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Classification Review Board, Australian Classification



Australian Government

Classification Review Board

Date:	05 July 2023
Applicant:	Bernard Gaynor
Interested parties:	See Appendix A
Business:	To review the Classification Board's decision to classify the publication <i>Gender Queer</i> , Unrestricted (M – Not recommended for readers under 15 years) .

Decision and reasons for decision

1. Decision

The Classification Review Board (the 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 (Publications, Computer game and Computer Games) Act 1995* (Cth) (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

Three members of the Review Board met on 29 May 2023, in response to the receipt of an application from Bernard Gaynor on 5 May 2023, to conduct the classification review of the publication, *Gender Queer*, which had previously been classified **Unrestricted** with consumer advice of **'M – Not recommended for readers under 15 years'** by the Classification Board. The Review Board determined that the application was a valid application.

The Review Board was provided a written submission from the Applicant.

The Review Board read the publication.

The Review Board was provided written submissions from the interested parties listed in Appendix A.

The Review Board heard an oral submission from the Applicant.

The Review Board heard an oral submission from a representative of the Australian Library and Information Association.

The Review Board then considered the matter.

4. Evidence and other material taken into account

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

- (i) Bernard Gaynor's application for review
- (ii) Bernard Gaynor's written and oral submissions
- (iii) The written and oral submissions of interested parties
- (iv) The publication, *Gender Queer*
- (v) The relevant provisions in the Classification Act, the Code and the Guidelines, and
- (vi) The Classification Board's report.

5. Synopsis

Gender Queer is an autobiographical non-fiction graphic memoir, written by Maia Kobabe, that explores the author's path to identifying as nonbinary and asexual. This 240-page edition was published in 2020 by Oni-Lion Forge Publishing Group.

6. Findings on material questions of fact

The Review Board 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 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 describes the focus of the publication with the following statement: "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."

The Review Board found that the publication contains aspects or depictions of importance under various classifiable elements:

- (a) Themes—the publication details the author's journey toward identifying as nonbinary and asexual. The exploration of these themes is clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, rear cover, and spine; the illustration on the front cover; and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (b) Violence—not present in the publication.
- (c) Sex—there is a pervasive narrative element of sex throughout the publication that is consistently mitigated by multiple contributing factors:

Descriptions and depictions of sex are justifiably interlinked with the publication's central premise of a memoir recounting how the author struggled to make sense of gender identity and sexuality.

Descriptions and depictions of sex are highly stylised and contain little or no realistic detail.

Descriptions and depictions of, and references to, sexual activity involving consenting adults is not exploitative, or gratuitous.

The presence of sex and nudity in the publication is justified in context, specifically that of being a non-fiction memoir describing the author's lived experience.

Sex and nudity are justifiably interlinked with the publication's core themes of gender identity and asexuality. These themes are clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, the illustration on the front cover, and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (d) Language—the publication contains infrequent strong coarse language, some of which is used with sexual connotations that are justified by context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (e) Drug Use—not present in the publication.

- (f) Nudity—the publication contains infrequent, highly stylised depictions of male and female nudity, including full-frontal nudity. These depictions are lacking in detail and justified in context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

7. Reasons for the decision

The publication is an autobiographical memoir, as indicated by the front and rear covers, and the statement on the title page that reads, 'This is a work of non-fiction'. The publication contains recollections of the author's lived experiences presented using the visual style of a graphic novel.

A majority of the Review Board is of the opinion that the publication contains highly stylised depictions of classifiable elements that are consistently justified by context and appropriate for its intended audience. The Review Board recognises that the intended audience for this publication are readers interested in the author, and/or interested in the publication's central themes of gender identity and asexuality.

A majority of the Review Board is of the opinion that the publication contains highly stylised depictions of nudity and sex that, when considered within the broader context of the publication, are no higher than moderate in impact, and are not exploitative, offensive, gratuitous, or very detailed.

Given the context of the publication, the character of the publication, its recognised literary and educational merit, and the likely intended audience of the publication, a majority of the Review Board considers the treatment of the classifiable elements to be no higher than moderate in impact, and not depicted in such a way that they offend against the standards of morality, decency, and propriety generally accepted by reasonable adults to the extent that this publication should be legally restricted.

8. Summary

Pursuant to the Guidelines, the impact of the classifiable elements in the publication is no higher than moderate. However, the majority of the Review Board recognises that some content with this publication may offend some sections of the adult community and may not be suitable for younger readers. It is therefore the majority view of the Review Board that the publication warrants a classification of: **Unrestricted** with the consumer advice of **'M – Not recommended for readers under 15 years'**. This consumer advice does not constitute a legal restriction.

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9. Appendix A-Names of interested parties

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From: s47F, [REDACTED]
To: s47F, [REDACTED]
Cc: s47F, s47E(c) [REDACTED] s47F [REDACTED]
Subject: Re: Final report - CONFIDENTIAL
Date: Wednesday, 5 July 2023 4:07:14 PM

Hi, s47F, s47E(c) [REDACTED]

s42 [REDACTED] I just wanted to give you the option.

Your response is perfect. Thank you.

s47 F, [REDACTED]

Sent from [Outlook for Android](#)

From: s47F, s47E(c) [REDACTED]
Sent: Wednesday, July 5, 2023 4:03:43 PM
To: s47F, s47E(c) [REDACTED]
Cc: s47F, s47E(c) [REDACTED]; s47F, s47E(c) [REDACTED]
Subject: Re: Final report - CONFIDENTIAL

Hi folks,

Interesting developments. Thank you for keeping us in the loop! s42 [REDACTED], or you have a specific concern, then I am satisfied that the current level of specificity in the report is appropriate.

Thanks
s47F, s47E(c) [REDACTED]

On Wed, 5 July 2023, 3:18 pm, s47F, s47E(c) [REDACTED] wrote:

Hi, s47F, s47E(c) [REDACTED] and s47F, s47E(c) [REDACTED]

s42 [REDACTED] I have attached the Final Draft to this email with the minority viewpoint removed. If there is anything you would like to add to the majority decision, especially regarding our reasons for decision and the impact of the classifiable elements, then please add your suggestions and return to me asap.

I'm away this evening and tomorrow but will still be contactable via email.

Thank you again for your patience,

s47F, s47E(c)

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From: s47F, s47E(c)
To: s47F,
Cc: s47F, ; s47F,
Subject: Re: Final report (CONFIDENTIAL)
Date: Thursday, 6 July 2023 8:16:24 AM

Good morning s47F,
s47E(c),

I was travelling yesterday and did not want to email too late. I have received your email last night, and note your comments.

Thanks.

On 6 Jul 2023, at 8:07 am, s47F, s47E(c) wrote:

I just realised that I should change all references to "the majority decision" to "the decision". I'll do that when I get home.

s47F,
s47E(c), could you please confirm that you are receiving these emails.

Thanks again,
s47F,
s47E(c)

Sent from [Outlook for Android](#)

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Classification Review Board, Australian Classification

From: s47F,
To: s47F, s47E(c)
Cc: s47F,
Subject: Re: Final report - CONFIDENTIAL
Date: Friday, 7 July 2023 4:50:38 PM

No worries at all!

Have a great weekend

Sent from [Outlook for Android](#)

From: s47F, s47E(c)
Sent: Friday, July 7, 2023 4:47:24 PM
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Final report - CONFIDENTIAL

Hi s47F, s47E(c),

I understand what you had meant, no apology needed.

My comment too may have been lost in email translation, s42 or the branch required on my account s47F, s47E(c). I am guided by your advice s47F, s47E(c) on the best way to proceed.

I have the same dates and times as s47F, s47E(c), other than the additional time that s47F, s47E(c) and I met by phone on the 8th and 14th of June.

s47F, s47E(c)

On 7 Jul 2023, at 4:02 pm, s47F, s47E(c) wrote:

Hiya,

s47F, s47E(c), I thought it might be helpful to s47F, s47E(c) if you explained how you calculated your hours spent on the deliberations, if that is okay with you. It also might be helpful for you both to compare the dates/times of meetings you both attended, for the sake of consistency and to potentially identify any missed events.

s42, s47F

[Redacted content]

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Of course, if you would like me to contact the branch and ask for reassurance that we are acting appropriately and not failing in any of our obligations (regarding transparency or any other concern) then I'm very happy to do so. I think the more peace of mind we can obtain with this review, the better!

Thanks again team,

s47F,
s47E(c)

From: s47F, s47E(c)
Sent: Friday, July 7, 2023 1:05 PM
To: s47F, s47E(c)
Cc: s47F, s47E(c)
Subject: Re: Final report - CONFIDENTIAL

Good afternoon s47F, s47E(c) and s47F, s47E(c),

As expressed verbally to s47F, s47E(c). I raised concern whether there is a risk of lack of transparency for the Board with the report in its current format. s42

I acknowledge they consider this to not be a concern. I look forward to an update as to the reports release in due course.

s47F, s47E(c), s47F, s47E(c) suggested I reach out to you regarding the hours undertaken in this matter, and whether there is a preferred format. I have drafted an invoice noting the dates and hours in the interim.

Thanks.

s47F, s47E(c)

On 6 Jul 2023, at 8:19 am, s47F, s47E(c) wrote:

Great - thank you!

s4
7F

Sent from [Outlook for Android](#)

From: s47F, s47E(c)
 Subject: Gender Queer decision + reminders [CONFIDENTIAL]
 Date: 20 Jul 2023 at 5:37:51 pm
 To: s47F, s47E(c) s47F, s47E(c)
 s47F, s47E(c) s47F, s47E(c)
 s47F, s47E(c) s47F, s47E(c)
 s47F, s47E(c)

CONFIDENTIAL

Hi, all

The decision report for *Gender Queer* has just been published online <https://www.classification.gov.au/about-us/classification-review-board/review-decisions> along with the media release <https://www.classification.gov.au/about-us/media-and-news/media-releases/gender-queer-classified-unrestricted-m-not-recommended-for-readers-under-15-years>

This was a highly sensitive review with a relatively high level of media interest, so be aware that there might be some pushback against the Review Board in response to this decision. If anyone attempts to contact you about this review, or if you happen to spot any negative press or social media coverage about the Review Board or any of the individual members, please let me know.

Please also be reminded that, as a member of the CRB, we are bound by confidentiality regarding reviews and decisions. This extends to disclosing any information regarding how the decision was reached, and whether you were on the panel. That is, you may neither confirm nor deny whether you were directly involved in this decision, or name who was involved.

If anyone has any comments or questions, please let me know.

s22(1)(a)(ii)

Talk soon,

s47F,
 s47E(c)
 s47F, s47E(c)

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Australian Government

Classification Review Board

Date:	05 July 2023
Applicant:	Bernard Gaynor
Interested parties:	See Appendix A
Business:	To review the Classification Board's decision to classify the publication <i>Gender Queer</i> , Unrestricted (M – Not recommended for readers under 15 years) .

Decision and reasons for decision

1. Decision

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

The decision was made by a majority of the Review Board members. These reasons reflect the reasons of the majority, which is the decision that prevails pursuant to s 79(1) of the *Classification (Publications, Computer game and Computer Games) Act 1995* (Cth) (the Classification Act).

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

Three members of the Review Board met on 29 May 2023, in response to the receipt of an application from Mr Bernard Gaynor on 5 May 2023, to conduct the classification review of the publication, *Gender Queer*, which had previously been classified **Unrestricted** with consumer advice of **'M – Not recommended for readers under 15 years'** by the Classification Board. The Review Board determined that the application was a valid application.

The Review Board was provided a written submission from the Applicant.

The Review Board read the publication.

The Review Board was provided written submissions from the interested parties listed in Appendix A.

The Review Board heard an oral submission from the Applicant.

The Review Board heard an oral submission from a representative of the Australian Library and Information Association.

The Review Board then considered the matter.

4. Evidence and other material taken into account

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

- (i) Mr Bernard Gaynor's application for review
- (ii) Mr Bernard Gaynor's written and oral submissions
- (iii) The written and oral submissions from The Australian Library and Information Association (ALIA)
- (iv) The written submissions from members of the public
- (v) The publication, *Gender Queer* by Maia Kobabe
- (vi) The relevant provisions in the Classification Act, the Code and the Guidelines, and
- (vii) The Classification Board's report.

5. Synopsis

Gender Queer is an autobiographical non-fiction graphic memoir, written by Maia Kobabe, that explores the author's path to identifying as nonbinary and asexual. This 240-page edition was published in 2020 by Oni-Lion Forge Publishing Group.

6. Findings on material questions of fact

The Review Board 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 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 describes the focus of the publication with the following statement: "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."

The Review Board found that the publication contains aspects or depictions of importance under various classifiable elements:

- (a) Themes—the publication details the author's journey toward identifying as nonbinary and asexual. The exploration of these themes is clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, rear cover, and spine; the illustration on the front cover; and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the Unrestricted level.

- (b) Violence—not present in the publication.
- (c) Sex—there is a pervasive narrative element of sex throughout the publication that is consistently mitigated by multiple contributing factors:

Descriptions and depictions of sex are justifiably interlinked with the publication's central premise of a memoir recounting how the author struggled to make sense of gender identity and sexuality.

Descriptions and depictions of sex are highly stylised and contain little or no realistic detail.

Descriptions and depictions of, and references to, sexual activity involving consenting adults is not exploitative, or gratuitous.

The presence of sex and nudity in the publication is justified in context, specifically that of being a non-fiction memoir describing the author's lived experience.

Sex and nudity are justifiably interlinked with the publication's core themes of gender identity and asexuality. These themes are clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, the illustration on the front cover, and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the Unrestricted level.

- (d) Language—the publication contains infrequent strong coarse language, some of which is used with sexual connotations that are justified by context.

The impact of this element is no higher than moderate and can be accommodated at the Unrestricted level.

- (e) Drug Use—not present in the publication.

- (f) Nudity—the publication contains infrequent, highly stylised depictions of male and female nudity, including full-frontal nudity. These depictions are lacking in detail and justified in context.

The impact of this element is no higher than moderate and can be accommodated at the Unrestricted level.

7. Reasons for the decision

Summary

The publication is an autobiographical memoir, as indicated by the front and rear covers, and the statement on the title page that reads, 'This is a work of non-fiction'. The publication contains recollections of the author's lived experiences presented using the visual style of a graphic novel.

The Review Board found that the publication contains highly stylised depictions of classifiable elements that are consistently justified by context and appropriate for its intended audience. The Review Board recognises that the intended audience for this publication are readers interested in the author, and/or interested in the publication's central themes of gender identity and asexuality.

The Review Board found that the publication contains highly stylised depictions of nudity and sex that, when considered within the broader context of the publication, are no higher than moderate in impact, and are not exploitative, offensive, gratuitous, or very detailed.

Given the context of the publication, the character of the publication, its recognised literary and educational merit, and the likely intended audience of the publication, a majority of the Review Board considers the treatment of the classifiable elements to be no higher than moderate in impact, and not

depicted in such a way that they offend against the standards of morality, decency, and propriety generally accepted by reasonable adults to the extent that this publication should be legally restricted.

The application by Mr Gaynor

Mr Gaynor summarised his submissions in his application as follows (at [4]):

- a) The Board wrongly applied the Act, Code and Guidelines to the findings that it did make about the contents and effects of *Gender Queer* and that the correct test required the Board to refuse classification to this publication;
- b) the Board further made errors in relation to its findings about the content and effects of *Gender Queer* that were not open to it based on the evidence before it and/or failed to consider necessary elements of *Gender Queer* under the under the Act, Code and Guidelines which provided additional reasons for this publication to be refused classification or to warrant restricted classification;

At the outset, the Review Board notes that its role is not to determine whether the Classification Board made an error or applied the wrong test. As noted above, under section 44 of the Act, 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.

The submission by ALIA

A representative from ALIA provided written and oral submissions in favour of an Unrestricted classification for *Gender Queer*. ALIA's submission detailed the well-established artistic, literary, and educational merit of the publication, and the praise and recognition it has earned from authorities within Australia and overseas. ALIA listed the myriad nominations and awards attributed to the publication, as well as the high acclaim and praise it has received from well-respected literary organisations, journals, schools, and educators. ALIA referred to the positive character and tone of the publication and how it sensitively treats complex themes and subjects, such as menstruation anxiety and masturbation. ALIA submitted that the publication contains infrequent sexual references that are not presented in a way that is exploitative, offensive, gratuitous, nor detailed, rather are used to explore themes such as gender identity and self-expression. The Review Board acknowledges ALIA's submission that *Gender Queer* has an important role in our community as an LGBTQIA+ text, especially for people who may have experienced, or are experiencing a similar journey to the author.

The Review Board notes ALIA's submission that a growing backlash exists against the LGBTQIA+ community, and that attempts to restrict or remove *Gender Queer* and other LGBTQIA+ materials forms part of that agenda. The Review Board also acknowledges ALIA's concerns that removing or restricting *Gender Queer* and other LGBTQIA+ from library shelves denies access to affirming materials for vulnerable members of our community who are non-binary, transgender, and/or asexual, many of whom are subject to prejudice and are at risk of self-harm and suicide.

Written submissions from interested members of the public

The Review Board received a large number of emails in response to this review. Overwhelmingly, those in favour of restricting or refusing classification for *Gender Queer* contained statements that the Review Board considered to be broadly anti-LGBTQIA+. The Review Board gave little weight to these submissions as they contained little or no evidence that the writers had read *Gender Queer*, or that they understood the content within the context of the publication. The submissions did not demonstrate engagement with the publication.

Most of the written submissions in favour of an Unrestricted classification contained clear and detailed evidence that the writers had read the book and understood the impact of the classifiable elements. The Review Board gave more weight to these submissions as they appeared to have been written by members of the intended audience of *Gender Queer* who had read and considered the content within the context of the publication.

The Classification Board's Decision Report

The Classification Board provided a comprehensive summary of reasons for classifying *Gender Queer* Unrestricted, paying particular attention to the treatment of themes, sex, and nudity, which the Review Board also determined to be the most classifiable elements of *Gender Queer*. The Review Board notes the Classification Board's reasoning and findings that some content within *Gender Queer* may offend some sections of the adult community, but that the treatment of themes, sex, and nudity does not impart an impact so strong as to warrant legal restriction to adults.

The Review Board considered Mr Gaynor's application and his submissions as to the appropriate classification of the publication. The Review Board also considered the submissions from ALIA, the members of the public, and the Classification Board's decision report. The Review Board concluded that the publication is to be classified as Unrestricted with the consumer advice '(M – Not recommended for readers under 15 years)'.

Nudity

The Applicant submitted that nudity is depicted frequently within the publication and some of these depictions are high in impact because of their emphasis, tone, and context. Mr Gaynor submitted that the publication contained frequent depictions of nudity that are likely to be offensive to most people, and the intensity and impact of these depictions are aggravated by, among other things, accompanying text and other imagery.

In particular, Mr Gaynor referred to various depictions of nudity at pages 13, 20-22, 29, 31, 35, 36, 124, 127-128, 212 and 213. Mr Gaynor made submissions regarding the impact of depictions involving adult themes, including depictions involving menstrual blood, bathrooms, and a pap smear.

The Review Board notes Mr Gaynor's submission that the depictions of nudity are likely to be offensive to most people and are unsuitable for a minor to see or read. The Review Board read the publication and considered the depictions of nudity throughout the publication. As outlined above, the Review Board found that the impact of this element is no higher than moderate and can be accommodated at the M level, as depictions of nudity are highly stylised and justified in context. The Review Board found that the depictions of nudity are not likely to cause offence to a reasonable adult. Consistent with the Guidelines, the Review Board considered that the publication does not warrant restriction to adults and should be classified 'Unrestricted' with relevant consumer advice.

Consistent with the Guidelines, the depictions referred to by Mr Gaynor on pages 13, 20-22, 29, 31, 35, 36, 127-128, 212, and 213 should not be classified as nudity because they do not contain any breast or genital detail. The full-frontal female nudity on page 124 is in the context of undressing for a medical examination and the feelings of discomfort associated with that experience. It is the Review Board's opinion that the impact of this image is no higher than moderate and can be accommodated at the M level.

Sexual activity

The Applicant submitted that sexual activity is depicted frequently and the depictions and descriptions of sexual activity are likely to be offensive to reasonable adults.

As outlined above, the Review Board found that there is a pervasive narrative element of sex, but that it is consistently mitigated by various factors discussed under Part 6 above. Descriptions and depictions of sexual activity are not exploitative, gratuitous, or very detailed. As per the impact section of the Guidelines, depictions are highly stylised and are less impactful than realistic depictions (such as photographs).

The Applicant made submissions about particular instances of sexual activity in the publication, including relating to the author's account of masturbation, sexting, and sexual activity with 'Candidate Z'.

In relation to the aspects of the publication relating to masturbation, Mr Gaynor submitted that these depictions and accompanying descriptions are high in impact and intensity and are likely to cause offence to a reasonable adult. Mr Gaynor submitted that, in context, certain depictions of masturbation and fantasising on page 61 of the publication depict the author under the age of 18. The depictions on page 61 are alleged to "involve depictions of a minor engaged in sexual activity and are high in impact, detailed and not discrete, and should not be classified as Unrestricted and instead warrant a refusal of classification under the Act, Code and Guidelines".

Pages 62-63 contain references to "vagina slime" and masturbation. Mr Gaynor submits that the implied references to sexual activity are "high in impact and are likely to cause offence to a reasonable adult and be considered an abhorrent or revolting phenomena." The Review Board considered that the references to masturbation, including but not limited to the aspects of pages 61-63 complained of, are lacking in detail and are justified in context. The Review Board took into account Mr Gaynor's submissions, but determined that the impact of this element is no higher than moderate and can be accommodated at the M level.

Pages 166 and 167 contain references to sexting and sexual activity using a strap-on. Mr Gaynor submitted that the depictions and description on pages 166 and 167 are "intense and high in impact and likely to cause offence to a reasonable adult". For the same reasons outlined above and in Part 6 of these reasons, the Review Board found that the impact of this element is no higher than moderate and can be accommodated at the M level.

Mr Gaynor submits that the publication contains references to paedophilia and to violent pornography. The Review Board did not identify any depictions of or references to paedophilia or violent pornography in *Gender Queer*. The publication does contain discrete references to pornography that are justified in context and are no higher than moderate in impact.

Mr Gaynor submits that depictions and descriptions of sex are "likely to be offensive to reasonable adults, especially because the intended audience of this publication is persons under the age of 18". The Review Board is of the opinion that the intended audience of this publication is adults, but that the book has a special crossover appeal to people aged 15 and above who are either members of the LGBTQIA+ community, are allies of the LGBTQIA+ community, or are interested in LGBTQIA+ stories. This supports the Review Board's decision to classify the publication as Unrestricted with the consumer advice '(M – Not recommended for readers under 15 years)'.

The Review Board disagrees with the Applicant's submission that the publication is aimed at children by virtue of it being written in the style of a graphic novel, or that sexual content within a graphic novel constitutes either child pornography or pornography that is targeted at children. The Review Board further disagrees with the Applicant's submission that the Classification Board's decision implies that "depictions of sexual activity involving minors, including sexual abuse of minors by adults, is not only acceptable but a normal and expected element of the behaviour and experiences of persons who are not heterosexual" or that "sexual activity involving minors, including with adults, is now considered

to meet the general standards or [sic] morality, decency and propriety when such behaviour involves persons who are not heterosexual”.

The Review Board determined that the author’s treatment of sex and sexuality throughout *Gender Queer* is consistently positive and framed by a pervasive sense of self-awareness, self-respect, self-love and self-acceptance. The author does not advocate sex or masturbation, rather the author demonstrates how they found sex to be something unpleasant and dissatisfying, and one of the key factors that helped them to understand they were asexual and non-binary.

The depiction of the fantasy based on Plato’s *Symposium*

Mr Gaynor submitted that the Classification Board did not classify *Gender Queer* in accordance with the Code and Guidelines in relation to an image on page 135 of the publication, thereby breaching s 9 of the Act. Mr Gaynor submitted that Item 1(b) of section 2 of the Code required the Classification Board to find that the publication should be refused classification.

The panel at the bottom of page 135 depicts the author lying on a couch at approximately age 14, fully clothed, eyes closed, arms resting across their mid-chest area. Above the author is a piece of text that reads, ‘An elaborate fantasy based on Plato’s *Symposium* with an arrow pointing to a framed artwork inside a thought bubble. Inside the thought bubble, we see an image of two nude male figures framed by square symbols. The males could be described as a bearded, older-looking male, and a clean-shaven, younger-looking male. The bearded male is kneeling before the clean-shaven male with one hand resting just beneath the clean-shaven male’s genitals. The image of the males is not titled but the Classification Board, the Review Board, ALIA, and the Applicant have all identified it as a highly stylised depiction of a work of pottery art attributed to the Brygos painter, dated around 4th BC Athens.

Mr Gaynor submitted that the Classification Board had found that the depiction was of a child under the age of 18 years engaged in sexual activity with a man, in the context of the author’s discovery of masturbation and “fetish habits and fantasies about paedophilia”. Mr Gaynor included a letter from Dr Lesley-anne Ey, a lecturer in Educational Psychology and Child Protection at the University of South Australia. Dr Ey stated her opinion that the image depicts sexual activity between a full-grown man and a child aged approximately 12 years.

The Review Board considered Mr Gaynor’s submission and noted that the paragraph at the top of page 5 of the Classification Board’s decision report contains an error and poor wording that has led to a misinterpretation by the Applicant. Specifically, the Classification Board states that the image on “page 134” of *Gender Queer* “does not depict a child under 18 years in a way that offends against the standards of morality, decency and propriety generally accepted by reasonable adults...” The Review Board understands that the Classification Board is referring to the panel image at the bottom of page 135 of *Gender Queer*, and not to an image on page 134. The Review Board determined that this is a typo made in error.

The Review Board notes Mr Gaynor’s submission that the Classification Board’s findings in the paragraph at the top of page 5 of the decision report serve as an admission that the Classification Board has identified ‘a child under 18 years’ in the Greek artwork, and that the Classification Board, therefore, should have classified *Gender Queer* as ‘refused classification’. The Review Board considered the Classification Board’s statement and determined it not to be an admission that the Greek artwork contains a depiction of a minor, but that the Classification Board is referencing the section of the Classification Guidelines for Publications that sets out the criteria for classifying a publication ‘refused classification’. The Review Board’s understanding of the Classification Board’s statement is that the Classification Board determined that the image on page 135 of *Gender Queer* does not depict a child under 18 years, nor does it depict a child, nor anyone, in a way that offends against the standards of

morality, decency and propriety generally accepted by reasonable adults. In any event, as set out below, the Review Board determined that the image *does not* depict a child under 18 years, *nor* does it depict a child, *nor anyone*, in a way that offends against the standards of morality, decency and propriety generally accepted by reasonable adults.

As noted by the Classification Board, the Greek artwork is "a highly stylised drawing of a work of ancient Greek art". The image is depicted within the same square symbols that surround the original work. The inclusion by the illustrator of the square symbols around the males is a strong indicator that the image is a stylised depiction of the flat, inanimate pottery art, and sets the artwork within its historical context. The Review Board considers that the artwork is an artist's impression of the bona fide artwork that contains less detail and realism than the original work, and is less realistic, sexual, intimate, and evocative than the original work. The image is tertiary to the primary image of the author on the couch and the secondary reference to Plato's *Symposium*, so is less active than the original artwork, which serves as the primary image on the ceramic.

The Review Board notes that the Applicant has speculated in his submission the ages of the males within the panel image; however, the Review Board is of the opinion that while the precise ages of the males in both the original artwork and the panel image are unclear, the Review Board is satisfied that the males are not children. The Review Board could not find any indicators in the publication that conclusively or definitely suggest whether either of the males in the panel image are minors. The Review Board also notes that the publication contains many examples of adults who appear to be depicted as minors, including numerous depictions of the author's mother.

The Applicant submits that the panel image on page 135 depicts the author fantasising about paedophilia. The Review Board determined that the Greek artwork inside the panel image on page 135 is a depiction of an older-looking male and a younger-looking male, and not a depiction of paedophilia, child exploitation, child pornography, or any other interaction between an adult and a minor. The Review Board notes the Classification Board's findings that the image likely depicts a sexual encounter between an ancient Greek scholar and his student. The Review Board rejects the Applicant's submission that 'student' means 'child'.

The Review Board disagrees with the Applicant's submission that the image is entirely gratuitous and has no contextual relevance to the publication because *Gender Queer* does not deal with any aspect of ancient Greek culture or art. The Review Board considered the context of the Greek artwork as a visual reference to help the reader understand the author's reference to Plato's *Symposium*, which is the subject of the author's fantasy in the panel image. The author does not describe the nature or the context of the fantasy or the roles that the Greek artwork and Plato's text serve within that fantasy. The Review Board determined that, for the reader to understand the panel image at the bottom of page 135, the reader is not expected to have read Plato's *Symposium* (an ancient Greek work of fiction containing a series of monologues about love) or know that the Greek artwork is attributed to the Brygos painter. The Review Board determined that the use of the panel, and the depictions and descriptions within the panel, is artistic for the purposes of information and expression, and is consistent with the positive tone and character of the publication. The Review Board has considered the Applicant's submission that the Greek artwork is sexualised because it appears in the context of masturbation. The Review Board determined that this element is mitigated by the surrounding panels and text that, along with the panel image at the bottom of page 135, describe how the author came to identify as asexual. As noted by the Classification Board, and by Mr Gaynor, the text surrounding the subject panel image reads, "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. The more I had to interact with my genitals the less likely I was to reach a point of satisfaction. The best fantasy was one that didn't require any physical touch at all". The Review Board determined

that the panel image and surrounding pages describe the author's anathema to masturbation and sex, which is consistent with the author's autobiographical realisation that e is asexual and non-binary.

The Review Board agrees with the Applicant's submission that the image would be likely considered criminal if the males were real people depicted contemporaneously, and the males were an adult and a minor, and the males were found to be involved in a sexual activity. The Review Board shares the Applicant's view that depictions of children engaged in sexual activity are beyond the norms of morality or decency accepted by society, as well as the Applicant's concern for victims of child abuse. The Review Board agrees with submissions by the Applicant, ALIA, members of the public, and the Classification Board that state that minors should be protected from material that is likely to harm or disturb them.

The Review Board found that the depiction on page 135 would not cause offence to a reasonable adult because the panel does not contain a detailed or realistic description or depiction of sexual activity, and it is not offensive, gratuitous, exploitative, or explicit. As the Classification Board notes in their Decision Report, the Greek artwork is highly stylised and justified in its historical context and the narrative context of the publication.

Themes

The Review Board agrees with the Applicant's submission that "*Gender Queer* deals with adult themes relating to sex, sexuality, sexual orientation, gender, and gender confusion from the perspective of a person who strongly believes that the traditional approaches to sex, gender and morality are flawed" and that "these are clearly themes and a perspective which can, should be and are widely canvassed in all manner of publications". The Review Board has considered the elements of sexuality, sexual orientation, gender, and gender dysphoria against the classifiable elements of sex, nudity, and themes in *Gender Queer*, and considered how the content and treatment of this element contributes to the impact. The Review Board agrees with the Classification Board's finding that the treatment of themes, sex, and nudity does not impart an impact so strong as to warrant legal restriction to adults. However, some of the events and recollections by the author may not be suitable for younger readers.

As outlined above, the Review Board found that the element of themes is inextricably interlinked with the elements of sex and nudity, all of which are consistently mitigated by various factors discussed under Part 6 above.

Promotion, incitement, or instruction in matters of crime

The Applicant submitted that the publication should be refused classification because it promotes, incites or instructs in matters of crime or violence. In particular, Mr Gaynor contended that two depictions promote crime in the publication:

- a) *The depiction on page 135 shows a naked man with an erection engaged in sexual activity with a boy, cupping the boy's penis with his hand.*
- b) *The depiction on page 61 shows the author masturbating while driving.*

The Review Board notes Mr Gaynor's submission that *Gender Queer* promotes, incites, or instructs in matters of crime, and depicts revolting and abhorrent phenomena. The Review Board disagrees that the depiction on page 135 shows a naked man with an erection engaged in sexual activity with a boy, and the Review Board also disagrees that the author's reference to masturbation while driving promotes, incites, or instructs others to drive dangerously. The Review Board determined that *Gender Queer* does not contain any content that is high impact, gratuitous, or exploitative, or likely to cause outrage or extreme disgust in a reasonable adult. The content does not promote or incite illegal

activity, and is not abusive, violent, sadistic, abhorrent, or cruel. All content in the book is justified in context and appropriate to its intended audience.

Finally, the Review Board notes the widespread recognition, critical reception, and acclaim that *Gender Queer* has received worldwide, including from ALIA, the peak body for libraries in Australia. 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). 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 Classification Branch has not received any complaints about *Gender Queer* from other peak Australian authorities such as the Australian Border Force.

The Review Board notes that *Gender Queer* is not banned or restricted in any other jurisdiction. The Review Board 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.

8. Summary

Pursuant to the Guidelines, the impact of the classifiable elements in the publication is no higher than moderate. All of the content in the publication is entirely justified in context and appropriate to its intended audience. The publication has a positive, lighthearted tone; positive character; and many layers of positive messaging. However, the Review Board recognises that some content with this publication may offend some sections of the adult community and may not be suitable for younger readers. It is therefore the Review Board's view that the publication warrants a classification of: **Unrestricted** with the consumer advice of '**M – Not recommended for readers under 15 years**'. This consumer advice does not constitute a legal restriction.

9. Appendix A-Names of interested parties

Released under the Freedom of Information Act 1982 by the
Classification Review Board, Australian Classification



Australian Government

Classification Review Board

Date:	05 July 2023
Applicant:	Bernard Gaynor
Interested parties:	See Appendix A
Business:	To review the Classification Board's decision to classify the publication <i>Gender Queer</i> , Unrestricted (M – Not recommended for readers under 15 years) .

Decision and reasons for decision

1. Decision

The Classification Review Board (the 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 (Publications, Computer game and Computer Games) Act 1995* (Cth) (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

Three members of the Review Board met on 29 May 2023, in response to the receipt of an application from Bernard Gaynor on 5 May 2023, to conduct the classification review of the publication, *Gender Queer*, which had previously been classified **Unrestricted** with consumer advice of **'M – Not recommended for readers under 15 years'** by the Classification Board. The Review Board determined that the application was a valid application.

The Review Board was provided a written submission from the Applicant.

The Review Board read the publication.

The Review Board was provided written submissions from the interested parties listed in Appendix A.

The Review Board heard an oral submission from the Applicant.

The Review Board heard an oral submission from a representative of the Australian Library and Information Association.

The Review Board then considered the matter.

4. Evidence and other material taken into account

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

- (i) Bernard Gaynor's application for review
- (ii) Bernard Gaynor's written and oral submissions
- (iii) The written and oral submissions of interested parties
- (iv) The publication, *Gender Queer*
- (v) The relevant provisions in the Classification Act, the Code and the Guidelines, and
- (vi) The Classification Board's report.

5. Synopsis

Gender Queer is an autobiographical non-fiction graphic memoir, written by Maia Kobabe, that explores the author's path to identifying as nonbinary and asexual. This 240-page edition was published in 2020 by Oni-Lion Forge Publishing Group.

6. Findings on material questions of fact

The Review Board 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 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 describes the focus of the publication with the following statement: "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."

The Review Board found that the publication contains aspects or depictions of importance under various classifiable elements:

- (a) Themes—the publication details the author's journey toward identifying as nonbinary and asexual. The exploration of these themes is clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, rear cover, and spine; the illustration on the front cover; and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (b) Violence—not present in the publication.
- (c) Sex—there is a pervasive narrative element of sex throughout the publication that is consistently mitigated by multiple contributing factors:

Descriptions and depictions of sex are justifiably interlinked with the publication's central premise of a memoir recounting how the author struggled to make sense of gender identity and sexuality.

Descriptions and depictions of sex are highly stylised and contain little or no realistic detail.

Descriptions and depictions of, and references to, sexual activity involving consenting adults is not exploitative, or gratuitous.

The presence of sex and nudity in the publication is justified in context, specifically that of being a non-fiction memoir describing the author's lived experience.

Sex and nudity are justifiably interlinked with the publication's core themes of gender identity and asexuality. These themes are clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, the illustration on the front cover, and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (d) Language—the publication contains infrequent strong coarse language, some of which is used with sexual connotations that are justified by context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

- (e) Drug Use—not present in the publication.

- (f) Nudity—the publication contains infrequent, highly stylised depictions of male and female nudity, including full-frontal nudity. These depictions are lacking in detail and justified in context.

The impact of this element is no higher than moderate and can be accommodated at the M level.

7. Reasons for the decision

The publication is an autobiographical memoir, as indicated by the front and rear covers, and the statement on the title page that reads, 'This is a work of non-fiction'. The publication contains recollections of the author's lived experiences presented using the visual style of a graphic novel.

The Review Board found that the publication contains highly stylised depictions of classifiable elements that are consistently justified by context and appropriate for its intended audience. The Review Board recognises that the intended audience for this publication are readers interested in the author, and/or interested in the publication's central themes of gender identity and asexuality.

The Review Board found that the publication contains highly stylised depictions of nudity and sex that, when considered within the broader context of the publication, are no higher than moderate in impact, and are not exploitative, offensive, gratuitous, or very detailed.

Given the context of the publication, the character of the publication, its recognised literary and educational merit, and the likely intended audience of the publication, a majority of the Review Board considers the treatment of the classifiable elements to be no higher than moderate in impact, and not depicted in such a way that they offend against the standards of morality, decency, and propriety generally accepted by reasonable adults to the extent that this publication should be legally restricted.

8. Summary

Pursuant to the Guidelines, the impact of the classifiable elements in the publication is no higher than moderate. However, the Review Board recognises that some content with this publication may offend some sections of the adult community and may not be suitable for younger readers. It is therefore the Review Board's view that the publication warrants a classification of: **Unrestricted** with the consumer advice of '**M – Not recommended for readers under 15 years**'. This consumer advice does not constitute a legal restriction.

Released under the Freedom of Information Act 1982 by the
Classification Review Board, Australian Classification

9. Appendix A-Names of interested parties

Released under the Freedom of Information Act 1982 by the
Classification Review Board, Australian Classification



Australian Government

Classification Review Board

Date: 05 July 2023

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

The decision was made by a majority of the Review Board members. These reasons reflect the reasons of the majority, which is the decision that prevails pursuant to s 79(1) of the *Classification (Publications, Computer game and Computer Games) Act 1995* (Cth) (the Classification Act).

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

Three members of the Review Board met on 29 May 2023, in response to the receipt of an application from Mr Bernard Gaynor on 5 May 2023, to conduct the classification review of the publication, *Gender Queer*, which had previously been classified **Unrestricted** with consumer advice of **'M – Not recommended for readers under 15 years'** by the Classification Board. The Review Board determined that the application was a valid application.

The Review Board was provided a written submission from the Applicant.

The Review Board read the publication.

The Review Board was provided written submissions from interested parties.

The Review Board heard an oral submission from the Applicant.

The Review Board heard an oral submission from a representative of the Australian Library and Information Association.

The Review Board then considered the matter.

4. Evidence and other material taken into account

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

- (i) Mr Bernard Gaynor's application for review
- (ii) Mr Bernard Gaynor's written and oral submissions
- (iii) The written and oral submissions from The Australian Library and Information Association (ALIA)
- (iv) The written submissions from members of the public
- (v) The publication, *Gender Queer* by Maia Kobabe
- (vi) The relevant provisions in the Classification Act, the Code and the Guidelines, and
- (vii) The Classification Board's report.

5. Synopsis

Gender Queer is an autobiographical non-fiction graphic memoir, written by Maia Kobabe, that explores the author's path to identifying as nonbinary and asexual. This 240-page edition was published in 2020 by Oni-Lion Forge Publishing Group.

6. Findings on material questions of fact

The Review Board 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 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 describes the focus of the publication with the following statement: "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."

The Review Board found that the publication contains aspects or depictions of importance under various classifiable elements:

- (a) Themes—the publication details the author's journey toward identifying as nonbinary and asexual. The exploration of these themes is clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, rear cover, and spine; the illustration on the front cover; and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the Unrestricted level.

- (b) Violence—not present in the publication.
- (c) Sex—there is a pervasive narrative element of sex throughout the publication that is consistently mitigated by multiple contributing factors:

Descriptions and depictions of sex are justifiably interlinked with the publication's central premise of a memoir recounting how the author struggled to make sense of gender identity and sexuality.

Descriptions and depictions of sex are highly stylised and contain little or no realistic detail.

Descriptions and depictions of, and references to, sexual activity involving consenting adults is not exploitative, or gratuitous.

The presence of sex and nudity in the publication is justified in context, specifically that of being a non-fiction memoir describing the author's lived experience.

Sex and nudity are justifiably interlinked with the publication's core themes of gender identity and asexuality. These themes are clearly signalled to a prospective reader by the use of the words 'gender' and 'queer' on the front cover, the illustration on the front cover, and the blurb on the rear cover.

The impact of this element is no higher than moderate and can be accommodated at the Unrestricted level.

- (d) Language—the publication contains infrequent strong coarse language, some of which is used with sexual connotations that are justified by context.

The impact of this element is no higher than moderate and can be accommodated at the Unrestricted level.

- (e) Drug Use—not present in the publication.

- (f) Nudity—the publication contains infrequent, highly stylised depictions of male and female nudity, including full-frontal nudity. These depictions are lacking in detail and justified in context.

The impact of this element is no higher than moderate and can be accommodated at the Unrestricted level.

7. Reasons for the decision

Summary

The publication is an autobiographical memoir, as indicated by the front and rear covers, and the statement on the title page that reads, 'This is a work of non-fiction'. The publication contains recollections of the author's lived experiences presented using the visual style of a graphic novel.

The Review Board found that the publication contains highly stylised depictions of classifiable elements that are consistently justified by context and appropriate for its intended audience. The Review Board recognises that the intended audience for this publication are readers interested in the author, and/or interested in the publication's central themes of gender identity and asexuality.

The Review Board found that the publication contains highly stylised depictions of nudity and sex that, when considered within the broader context of the publication, are no higher than moderate in impact, and are not exploitative, offensive, gratuitous, or very detailed.

Given the context of the publication, the character of the publication, its recognised literary and educational merit, and the likely intended audience of the publication, a majority of the Review Board considers the treatment of the classifiable elements to be no higher than moderate in impact, and not

depicted in such a way that they offend against the standards of morality, decency, and propriety generally accepted by reasonable adults to the extent that this publication should be legally restricted.

The application by Mr Gaynor

Mr Gaynor summarised his submissions in his application as follows (at [4]):

- a) The Board wrongly applied the Act, Code and Guidelines to the findings that it did make about the contents and effects of *Gender Queer* and that the correct test required the Board to refuse classification to this publication;
- b) the Board further made errors in relation to its findings about the content and effects of *Gender Queer* that were not open to it based on the evidence before it and/or failed to consider necessary elements of *Gender Queer* under the under the Act, Code and Guidelines which provided additional reasons for this publication to be refused classification or to warrant restricted classification;

At the outset, the Review Board notes that its role is not to determine whether the Classification Board made an error or applied the wrong test. As noted above, under section 44 of the Act, 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.

The submission by ALIA

A representative from ALIA provided written and oral submissions in favour of an Unrestricted classification for *Gender Queer*. ALIA's submission detailed the well-established artistic, literary, and educational merit of the publication, and the praise and recognition it has earned from authorities within Australia and overseas. ALIA listed the myriad nominations and awards attributed to the publication, as well as the high acclaim and praise it has received from well-respected literary organisations, journals, schools, and educators. ALIA referred to the positive character and tone of the publication and how it sensitively treats complex themes and subjects, such as menstruation anxiety and masturbation. ALIA submitted that the publication contains infrequent sexual references that are not presented in a way that is exploitative, offensive, gratuitous, nor detailed, rather are used to explore themes such as gender identity and self-expression. The Review Board acknowledges ALIA's submission that *Gender Queer* has an important role in our community as an LGBTQIA+ text, especially for people who may have experienced, or are experiencing a similar journey to the author.

The Review Board notes ALIA's submission that a growing backlash exists against the LGBTQIA+ community, and that attempts to restrict or remove *Gender Queer* and other LGBTQIA+ materials forms part of that agenda. The Review Board also acknowledges ALIA's concerns that removing or restricting *Gender Queer* and other LGBTQIA+ from library shelves denies access to affirming materials for vulnerable members of our community who are non-binary, transgender, and/or asexual, many of whom are subject to prejudice and are at risk of self-harm and suicide.

Written submissions from interested members of the public

The Review Board received a large number of emails in response to this review. Overwhelmingly, those in favour of restricting or refusing classification for *Gender Queer* contained statements that the Review Board considered to be broadly anti-LGBTQIA+. The Review Board gave little weight to these submissions as they contained little or no evidence that the writers had read *Gender Queer*, or that they understood the content within the context of the publication. The submissions did not demonstrate engagement with the publication.

Most of the written submissions in favour of an Unrestricted classification contained clear and detailed evidence that the writers had read the book and understood the impact of the classifiable elements. The Review Board gave more weight to these submissions as they appeared to have been written by members of the intended audience of *Gender Queer* who had read and considered the content within the context of the publication.

The Classification Board's Decision Report

The Classification Board provided a comprehensive summary of reasons for classifying *Gender Queer* Unrestricted, paying particular attention to the treatment of themes, sex, and nudity, which the Review Board also determined to be the most classifiable elements of *Gender Queer*. The Review Board notes the Classification Board's reasoning and findings that some content within *Gender Queer* may offend some sections of the adult community, but that the treatment of themes, sex, and nudity does not impart an impact so strong as to warrant legal restriction to adults.

The Review Board considered Mr Gaynor's application and his submissions as to the appropriate classification of the publication. The Review Board also considered the submissions from ALIA, the members of the public, and the Classification Board's decision report. The Review Board concluded that the publication is to be classified as Unrestricted with the consumer advice '(M – Not recommended for readers under 15 years)'.

Nudity

The Applicant submitted that nudity is depicted frequently within the publication and some of these depictions are high in impact because of their emphasis, tone, and context. Mr Gaynor submitted that the publication contained frequent depictions of nudity that are likely to be offensive to most people, and the intensity and impact of these depictions are aggravated by, among other things, accompanying text and other imagery.

In particular, Mr Gaynor referred to various depictions of nudity at pages 13, 20-22, 29, 31, 35, 36, 124, 127-128, 212 and 213. Mr Gaynor made submissions regarding the impact of depictions involving adult themes, including depictions involving menstrual blood, bathrooms, and a pap smear.

The Review Board notes Mr Gaynor's submission that the depictions of nudity are likely to be offensive to most people and are unsuitable for a minor to see or read. The Review Board read the publication and considered the depictions of nudity throughout the publication. As outlined above, the Review Board found that the impact of this element is no higher than moderate and can be accommodated at the M level, as depictions of nudity are highly stylised and justified in context. The Review Board found that the depictions of nudity are not likely to cause offence to a reasonable adult. Consistent with the Guidelines, the Review Board considered that the publication does not warrant restriction to adults and should be classified 'Unrestricted' with relevant consumer advice.

Consistent with the Guidelines, the depictions referred to by Mr Gaynor on pages 13, 20-22, 29, 31, 35, 36, 127-128, 212, and 213 should not be classified as nudity because they do not contain any breast or genital detail. The full-frontal female nudity on page 124 is in the context of undressing for a medical examination and the feelings of discomfort associated with that experience. It is the Review Board's opinion that the impact of this image is no higher than moderate and can be accommodated at the M level.

Sexual activity

The Applicant submitted that sexual activity is depicted frequently and the depictions and descriptions of sexual activity are likely to be offensive to reasonable adults.

As outlined above, the Review Board found that there is a pervasive narrative element of sex, but that it is consistently mitigated by various factors discussed under Part 6 above. Descriptions and depictions of sexual activity are not exploitative, gratuitous, or very detailed. As per the impact section of the Guidelines, depictions are highly stylised and are less impactful than realistic depictions (such as photographs).

The Applicant made submissions about particular instances of sexual activity in the publication, including relating to the author's account of masturbation, sexting, and sexual activity with 'Candidate Z'.

In relation to the aspects of the publication relating to masturbation, Mr Gaynor submitted that these depictions and accompanying descriptions are high in impact and intensity and are likely to cause offence to a reasonable adult. Mr Gaynor submitted that, in context, certain depictions of masturbation and fantasising on page 61 of the publication depict the author under the age of 18. The depictions on page 61 are alleged to "involve depictions of a minor engaged in sexual activity and are high in impact, detailed and not discrete, and should not be classified as Unrestricted and instead warrant a refusal of classification under the Act, Code and Guidelines".

Pages 62-63 contain references to "vagina slime" and masturbation. Mr Gaynor submits that the implied references to sexual activity are "high in impact and are likely to cause offence to a reasonable adult and be considered an abhorrent or revolting phenomena." The Review Board considered that the references to masturbation, including but not limited to the aspects of pages 61-63 complained of, are lacking in detail and are justified in context. The Review Board took into account Mr Gaynor's submissions, but determined that the impact of this element is no higher than moderate and can be accommodated at the M level.

Pages 166 and 167 contain references to sexting and sexual activity using a strap-on. Mr Gaynor submitted that the depictions and description on pages 166 and 167 are "intense and high in impact and likely to cause offence to a reasonable adult". For the same reasons outlined above and in Part 6 of these reasons, the Review Board found that the impact of this element is no higher than moderate and can be accommodated at the M level.

Mr Gaynor submits that the publication contains references to paedophilia and to violent pornography. The Review Board did not identify any depictions of or references to paedophilia or violent pornography in *Gender Queer*. The publication does contain discrete references to pornography that are justified in context and are no higher than moderate in impact.

Mr Gaynor submits that depictions and descriptions of sex are "likely to be offensive to reasonable adults, especially because the intended audience of this publication is persons under the age of 18". The Review Board is of the opinion that the intended audience of this publication is adults, but that the book has a special crossover appeal to people aged 15 and above who are either members of the LGBTQIA+ community, are allies of the LGBTQIA+ community, or are interested in LGBTQIA+ stories. This supports the Review Board's decision to classify the publication as Unrestricted with the consumer advice '(M – Not recommended for readers under 15 years)'.

The Review Board disagrees with the Applicant's submission that the publication is aimed at children by virtue of it being written in the style of a graphic novel, or that sexual content within a graphic novel constitutes either child pornography or pornography that is targeted at children. The Review Board further disagrees with the Applicant's submission that the Classification Board's decision implies that "depictions of sexual activity involving minors, including sexual abuse of minors by adults, is not only acceptable but a normal and expected element of the behaviour and experiences of persons who are not heterosexual" or that "sexual activity involving minors, including with adults, is now considered

to meet the general standards or [sic] morality, decency and propriety when such behaviour involves persons who are not heterosexual”.

The Review Board determined that the author’s treatment of sex and sexuality throughout *Gender Queer* is consistently positive and framed by a pervasive sense of self-awareness, self-respect, self-love and self-acceptance. The author does not advocate sex or masturbation, rather the author demonstrates how they found sex to be something unpleasant and dissatisfying, and one of the key factors that helped them to understand they were asexual and non-binary.

The depiction of the fantasy based on Plato’s *Symposium*

Mr Gaynor submitted that the Classification Board did not classify *Gender Queer* in accordance with the Code and Guidelines in relation to an image on page 135 of the publication, thereby breaching s 9 of the Act. Mr Gaynor submitted that Item 1(b) of section 2 of the Code required the Classification Board to find that the publication should be refused classification.

The panel at the bottom of page 135 depicts the author lying on a couch at approximately age 14, fully clothed, eyes closed, arms resting across their mid-chest area. Above the author is a piece of text that reads, ‘An elaborate fantasy based on Plato’s *Symposium* with an arrow pointing to a framed artwork inside a thought bubble. Inside the thought bubble, we see an image of two nude male figures framed by square symbols. The males could be described as a bearded, older-looking male, and a clean-shaven, younger-looking male. The bearded male is kneeling before the clean-shaven male with one hand resting just beneath the clean-shaven male’s genitals. The image of the males is not titled but the Classification Board, the Review Board, ALIA, and the Applicant have all identified it as a highly stylised depiction of a work of pottery art attributed to the Brygos painter, dated around 4th BC Athens.

Mr Gaynor submitted that the Classification Board had found that the depiction was of a child under the age of 18 years engaged in sexual activity with a man, in the context of the author’s discovery of masturbation and “fetish habits and fantasies about paedophilia”. Mr Gaynor included a letter from Dr Lesley-anne Ey, a lecturer in Educational Psychology and Child Protection at the University of South Australia. Dr Ey stated her opinion that the image depicts sexual activity between a full-grown man and a child aged approximately 12 years.

The Review Board considered Mr Gaynor’s submission and noted that the paragraph at the top of page 5 of the Classification Board’s decision report contains an error and poor wording that has led to a misinterpretation by the Applicant. Specifically, the Classification Board states that the image on “page 134” of *Gender Queer* “does not depict a child under 18 years in a way that offends against the standards of morality, decency and propriety generally accepted by reasonable adults...” The Review Board understands that the Classification Board is referring to the panel image at the bottom of page 135 of *Gender Queer*, and not to an image on page 134. The Review Board determined that this is a typo made in error.

The Review Board notes Mr Gaynor’s submission that the Classification Board’s findings in the paragraph at the top of page 5 of the decision report serve as an admission that the Classification Board has identified ‘a child under 18 years’ in the Greek artwork, and that the Classification Board, therefore, should have classified *Gender Queer* as ‘refused classification’. The Review Board considered the Classification Board’s statement and determined it not to be an admission that the Greek artwork contains a depiction of a minor, but that the Classification Board is referencing the section of the Classification Guidelines for Publications that sets out the criteria for classifying a publication ‘refused classification’. The Review Board’s understanding of the Classification Board’s statement is that the Classification Board determined that the image on page 135 of *Gender Queer* does not depict a child under 18 years, nor does it depict a child, nor anyone, in a way that offends against the standards of

morality, decency and propriety generally accepted by reasonable adults. In any event, as set out below, the Review Board determined that the image *does not* depict a child under 18 years, *nor* does it depict a child, *nor anyone*, in a way that offends against the standards of morality, decency and propriety generally accepted by reasonable adults.

As noted by the Classification Board, the Greek artwork is "a highly stylised drawing of a work of ancient Greek art". The image is depicted within the same square symbols that surround the original work. The inclusion by the illustrator of the square symbols around the males is a strong indicator that the image is a stylised depiction of the flat, inanimate pottery art, and sets the artwork within its historical context. The Review Board considers that the artwork is an artist's impression of the bona fide artwork that contains less detail and realism than the original work, and is less realistic, sexual, intimate, and evocative than the original work. The image is tertiary to the primary image of the author on the couch and the secondary reference to Plato's *Symposium*, so is less active than the original artwork, which serves as the primary image on the ceramic.

The Review Board notes that the Applicant has speculated in his submission the ages of the males within the panel image; however, the Review Board is of the opinion that while the precise ages of the males in both the original artwork and the panel image are unclear, the Review Board is satisfied that the males are not children. The Review Board could not find any indicators in the publication that conclusively or definitely suggest whether either of the males in the panel image are minors. The Review Board also notes that the publication contains many examples of adults who appear to be depicted as minors, including numerous depictions of the author's mother.

The Applicant submits that the panel image on page 135 depicts the author fantasising about paedophilia. The Review Board determined that the Greek artwork inside the panel image on page 135 is a depiction of an older-looking male and a younger-looking male, and not a depiction of paedophilia, child exploitation, child pornography, or any other interaction between an adult and a minor. The Review Board notes the Classification Board's findings that the image likely depicts a sexual encounter between an ancient Greek scholar and his student. The Review Board rejects the Applicant's submission that 'student' means 'child'.

The Review Board disagrees with the Applicant's submission that the image is entirely gratuitous and has no contextual relevance to the publication because *Gender Queer* does not deal with any aspect of ancient Greek culture or art. The Review Board considered the context of the Greek artwork as a visual reference to help the reader understand the author's reference to Plato's *Symposium*, which is the subject of the author's fantasy in the panel image. The author does not describe the nature or the context of the fantasy or the roles that the Greek artwork and Plato's text serve within that fantasy. The Review Board determined that, for the reader to understand the panel image at the bottom of page 135, the reader is not expected to have read Plato's *Symposium* (an ancient Greek work of fiction containing a series of monologues about love) or know that the Greek artwork is attributed to the Brygos painter. The Review Board determined that the use of the panel, and the depictions and descriptions within the panel, is artistic for the purposes of information and expression, and is consistent with the positive tone and character of the publication. The Review Board has considered the Applicant's submission that the Greek artwork is sexualised because it appears in the context of masturbation. The Review Board determined that this element is mitigated by the surrounding panels and text that, along with the panel image at the bottom of page 135, describe how the author came to identify as asexual. As noted by the Classification Board, and by Mr Gaynor, the text surrounding the subject panel image reads, "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. The more I had to interact with my genitals the less likely I was to reach a point of satisfaction. The best fantasy was one that didn't require any physical touch at all". The Review Board determined

that the panel image and surrounding pages describe the author's anathema to masturbation and sex, which is consistent with the author's autobiographical realisation that e is asexual and non-binary.

The Review Board agrees with the Applicant's submission that the image would be likely considered criminal if the males were real people depicted contemporaneously, and the males were an adult and a minor, and the males were found to be involved in a sexual activity. The Review Board shares the Applicant's view that depictions of children engaged in sexual activity are beyond the norms of morality or decency accepted by society, as well as the Applicant's concern for victims of child abuse. The Review Board agrees with submissions by the Applicant, ALIA, members of the public, and the Classification Board that state that minors should be protected from material that is likely to harm or disturb them.

The Review Board found that the depiction on page 135 would not cause offence to a reasonable adult because the panel does not contain a detailed or realistic description or depiction of sexual activity, and it is not offensive, gratuitous, exploitative, or explicit. As the Classification Board notes in their Decision Report, the Greek artwork is highly stylised and justified in its historical context and the narrative context of the publication.

Themes

The Review Board agrees with the Applicant's submission that "*Gender Queer* deals with adult themes relating to sex, sexuality, sexual orientation, gender, and gender confusion from the perspective of a person who strongly believes that the traditional approaches to sex, gender and morality are flawed" and that "these are clearly themes and a perspective which can, should be and are widely canvassed in all manner of publications". The Review Board has considered the elements of sexuality, sexual orientation, gender, and gender dysphoria against the classifiable elements of sex, nudity, and themes in *Gender Queer*, and considered how the content and treatment of this element contributes to the impact. The Review Board agrees with the Classification Board's finding that the treatment of themes, sex, and nudity does not impart an impact so strong as to warrant legal restriction to adults. However, some of the events and recollections by the author may not be suitable for younger readers.

As outlined above, the Review Board found that the element of themes is inextricably interlinked with the elements of sex and nudity, all of which are consistently mitigated by various factors discussed under Part 6 above.

Promotion, incitement, or instruction in matters of crime

The Applicant submitted that the publication should be refused classification because it promotes, incites or instructs in matters of crime or violence. In particular, Mr Gaynor contended that two depictions promote crime in the publication:

- a) *The depiction on page 135 shows a naked man with an erection engaged in sexual activity with a boy, cupping the boy's penis with his hand.*
- b) *The depiction on page 61 shows the author masturbating while driving.*

The Review Board notes Mr Gaynor's submission that *Gender Queer* promotes, incites, or instructs in matters of crime, and depicts revolting and abhorrent phenomena. The Review Board disagrees that the depiction on page 135 shows a naked man with an erection engaged in sexual activity with a boy, and the Review Board also disagrees that the author's reference to masturbation while driving promotes, incites, or instructs others to drive dangerously. The Review Board determined that *Gender Queer* does not contain any content that is high impact, gratuitous, or exploitative, or likely to cause outrage or extreme disgust in a reasonable adult. The content does not promote or incite illegal

activity, and is not abusive, violent, sadistic, abhorrent, or cruel. All content in the book is justified in context and appropriate to its intended audience.

Finally, the Review Board notes the widespread recognition, critical reception, and acclaim that *Gender Queer* has received worldwide, including from ALIA, the peak body for libraries in Australia. 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). 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 Classification Branch has not received any complaints about *Gender Queer* from other peak Australian authorities such as the Australian Border Force.

The Review Board notes that *Gender Queer* is not banned or restricted in any other jurisdiction. The Review Board 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.

8. Summary

Pursuant to the Guidelines, the impact of the classifiable elements in the publication is no higher than moderate. All of the content in the publication is entirely justified in context and appropriate to its intended audience. The publication has a positive, lighthearted tone; positive character; and many layers of positive messaging. However, the Review Board recognises that some content with this publication may offend some sections of the adult community and may not be suitable for younger readers. It is therefore the Review Board's view that the publication warrants a classification of: **Unrestricted** with the consumer advice of '**M – Not recommended for readers under 15 years**'. This consumer advice does not constitute a legal restriction.