



# 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 4<sup>th</sup> 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.