

**NOTICE OF DECISION
UNDER SECTION 38(1)**

TO: Secretary for Internal Affairs
Department of Internal Affairs
PO Box 805
Wellington



Title of Publication: Happy Feet
Other Known Title(s): Not Stated
Director: George Miller
Producer: Doug Mitchell, et al.
Format: Film 35mm
Country of Origin: USA
Language(s): English



Components of Film:

	Component	Running time
Feature:	Happy Feet	109.44
Total running time:		109.44

Excision/Alteration: No Excisions Recommended

Reason(s) for Excision:

Not Applicable

Decision:

Unrestricted: Parental guidance recommended for younger viewers.

OFLC No: 700172

... Please turn over

Descriptive Note

Some scenes may scare very young children.

Display Conditions:

Not Applicable

Direction to issue a label has been given.



REASONS FOR DECISION

Submission procedure:

In a letter dated 15 January 2007, the Chief Censor directed the Department of Internal Affairs to obtain and submit the publication for classification under s13(1)(b) of the FVPC Act. The Chief Censor provided reasons for determining that the publication should be received for examination by the Office of Film and Literature Classification, stating that:

This film was rated G by the Australian Classification Board, and was accordingly cross-rated to a New Zealand G by the Film and Video Labelling Body Inc. However, the film has been rated PG in its country of Origin and the equivalent of PG in Ontario, Singapore, Finland, Switzerland and the Netherlands for its scenes of mild peril and sexual innuendo. A member of the public has complained about the film's G rating and absence of descriptive note to the Classification Office. I am consequently concerned that the rating assigned to this film may not accurately reflect its content under New Zealand law.

Interested parties, the Secretary of Internal affairs, Roadshow Film Distributors, and the complainants were reminded of their right to make submissions by the Office in letters dated 5 February 2007. The distributor and complainants were also notified of their right to make submissions by the Department of Internal Affairs Censorship Compliance unit in letters dated 7 February 2007. Submissions were to be received by the Classification Office on or before 23 February 2007, however no submissions were received by the Office from any of the interested parties.

Under s23(1) of the FVPC Act the Classification Office is required to examine and classify the publication.

Under s23(2) of the FVPC Act, the Classification Office must determine whether the publication is to be classified as unrestricted, objectionable, or objectionable except in particular circumstances.

Section 23(3) permits the Classification Office to restrict a publication that would otherwise be classified as objectionable so that it can be made available to particular persons or classes of persons for educational, professional, scientific, literary, artistic, or technical purposes.

Description of the publication:

The 35mm film *Happy Feet* is an animated film that is 109 min 44 sec in length. The voices of the principal animated characters are dubbed in by well known Hollywood actors. Typical of other films in this genre of children's animated features, the characters are anthropomorphised animals, birds and fish. In *Happy Feet* the principal characters are Emperor penguins, whose behaviour, speech, emotions and motivations are all those of humans. All penguins in the feature, both Emperor and Blue penguins, communicate with each other through song and dance, primarily pop and R&B standards from the USA.

The plot involves a young Emperor penguin named Mambo, who is different than the rest of his community because they all sing to express themselves and to find a mate, while he has no voice and dances instead. He is shunned and blamed for the lack of fish supplies which threatens the community with starvation. He is driven out of the community by the elders and goes in search of the humans, who he believes have the answer to the food shortage. The feature follows him on his adventures, his discovery of the huge fishing ships who are catching all the fish, and his captivity in an aquarium where he becomes depressed and no longer dances. He attempts to communicate with the humans to tell them they are taking all the fish, eventually impressing them with his ability to dance and leading them back to his community with a homing device strapped to his back. As a result he is welcomed back by the other penguins and is allowed to be with Gloria, his penguin love. The humans set up a marine reserve in Antarctic waters and there is plenty of fish for all.

The meaning of "objectionable":

Section 3(1) of the FVPC Act sets out the meaning of the word "objectionable". The section states that a publication is objectionable if it:

describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

The Court of Appeal's interpretation of the words "matters such as sex, horror, crime, cruelty or violence" in s3(1), as set out in *Living Word Distributors v Human Rights Action Group (Wellington)*, must also be taken into account in the classification of any publication:

[27] The words "matters such as" in context are both expanding and limiting. They expand the qualifying content beyond a bare focus on one of the five categories specified. But the expression "such as" is narrower than "includes", which was the term used in defining "indecent" in the repealed Indecent Publications Act 1963. Given the similarity of the content description in the successive statutes, "such as" was a deliberate departure from the unrestricting "includes".

[28] The words used in s3 limit the qualifying publications to those that can fairly be described as dealing with matters of the kinds listed. In that regard, too, the collocation of words "sex, horror, crime, cruelty or violence", as the matters dealt with, tends to point to activity rather than to the expression of opinion or attitude.

[29] That, in our view, is the scope of the subject matter gateway.¹

¹ *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.

The content of the publication must bring it within the "subject matter gateway". In classifying the publication therefore, the main question is whether or not it deals with the following matters in such a manner that the availability of the publication is likely to be injurious to the public good:

Matters such as sex

There are several low-level verbal references of a sexual nature that would be incomprehensible to younger viewers. These are added, presumably, as part of the feature's attempt to provide dual appeal for young children and adults. For example, one of the blue penguins, the leader of their group and high priest, is named "Lovelace", partly due to the plastic 'lace' from a six pack of beer that he has stuck around his neck. All the male and female penguins are constantly engaged in flirting and trying to attract members of the opposite sex in order to mate and have chicks. Lovelace tells Mambo and the blue penguins gathered around to "go f... forth and multiply!" as he leads two female penguins away. In addition, many of the song lyrics of the contemporary tunes the penguins sing contain mild sexual innuendo or other sexual references. To adults, the implications will be obvious, although these will not be at all clear to children, who will ignore these aspects of the story and dialogue, understanding the concepts of love and mating to have chicks only in the broadest sense.

Matters such as horror

While the publication does not deal with matters of horror in the traditional sense, there are images that are frightening and disturbing due to their sudden impact in visual and aural terms and the threat of violence to central and sympathetic characters. These elements have the effect of making the natural world seem at times a threatening and violent place and the incursions of humans into that world as overwhelming, destructive and "alien". The feature aims to make these points in its depictions of massive ice-breaking ships hauling huge loads of fish out of the water, huge metal diggers falling from breaking ice and floating eerily down through deep water, human debris and rubbish floating in evil looking oil slicks. Some of these depictions will disturb, sadden and upset very young children and this is the intention of the feature.

There are two particularly frightening sequences which create the same sudden fright, increase of tension and release of tension in the viewer as can be found in countless horror movies. In the first, Mambo is attacked by a leopard seal, who chases him through the water snapping at him with huge jaws full of sharp teeth. Mambo manages to get up onto some thin ice and the seal can be seen swimming below him, eventually leaping up and flipping Mambo back into the water in an attempt to eat him. During the chase, dramatic music increases the tension, which only abates once Mambo manages to get up on the ice-pack and away from the snapping seal.

In a second frightening scene, Killer whales are making sport of tossing the penguins up into the air and holding them in their huge mouths when the massive prow of an icebreaker suddenly drives through the ice just next to the penguins. This is a loud and shocking image and is likely to disturb and upset young children. When Mambo is later incarcerated in the aquarium and becomes depressed and hallucinates, young children are also likely to be disturbed.

Matters such as violence

Violence is not directly depicted, although the threat of violent death is played out in several scenes of the feature, as outlined above.

Certain publications are "deemed to be objectionable":

Under s3(2) of the FVPC Act, a publication is deemed to be objectionable if it promotes or supports, or tends to promote or support, certain activities listed in that subsection.

In *Moonen v Film and Literature Board of Review (Moonen I)*, the Court of Appeal stated that the words "promotes or supports" must be given "such available meaning as impinges as little as possible on the freedom of expression"² in order to be consistent with the Bill of Rights. The Court then set out how a publication may come within a definition of "promotes or supports" in s3(2) that impinges as little as possible on the freedom of expression:

Description and depiction ... of a prohibited activity do not of themselves necessarily amount to promotion of or support for that activity. There must be something about the way the prohibited activity is described, depicted or otherwise dealt with, which can fairly be said to have the effect of promoting or supporting that activity.³

Mere depiction or description of any of the s3(2) matters will generally not be enough to deem a publication to be objectionable under s3(2). When used in conjunction with an activity, the Classification Office defines "promote" to mean the advancement or encouragement of that activity. The Classification Office interprets the word "support" to mean the upholding and strengthening of something so that it is more likely to endure. A publication must therefore advance, encourage, uphold or strengthen, rather than merely depict, describe or deal with, one of the matters listed in s3(2) for it to be deemed to be objectionable under that provision.

The Classification Office has considered all of the matters in s3(2). *Happy Feet* does not fall within s3(2) because it contains none of the matters listed therein.

Matters to be given particular weight:

Section 3(3) of the FVPC Act deals with the matters which the Classification Office must give particular weight to in determining whether or not any publication (other than a publication to which subsection (2) of this section applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable.

The Classification Office has considered all the matters in s3(3). There are no matters which it considers relevant to *Happy Feet*.

² *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at para 27.

³ Above n2 at para 29.

Additional matters to be considered:

Under s3(4), the Classification Office must also consider the following matters:

s3(4)(a) The dominant effect of the publication as a whole.

The publication's dominant effect is that of an animated children's film designed to highlight aspects of the Emperor Penguins' Antarctic environment and human's responsibility for conservation of that environment. It has some elements that would scare young children and others of an adult nature that would be incomprehensible to children.

s3(4)(b) The impact of the medium in which the publication is presented.

The 35mm film will be publicly displayed at cinemas with large screens with superior sound systems, suitable for large audiences. The feature is likely to have a high impact on its audience when presented in this format.

s3(4)(c) The character of the publication, including any merit, value or importance it has in relation to literary, artistic, social, cultural, educational, scientific or other matters.

The publication is intended for a wide audience and is designed to amuse both adults and children alike, the humour and messages operating on different levels of understanding. Some of the messages in the feature are likely to be confusing for younger children and they may require parental guidance.

s3(4)(d) The persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available.

Dealt with above under s3(4)(c).

s3(4)(e) The purpose for which the publication is intended to be used.

The publication is intended for entertainment purposes.

s3(4)(f) Any other relevant circumstances relating to the intended or likely use of the publication.

The publication has finished its cinematic release so the classification and amended rating will apply to subsequent DVD releases.

Publication may be age-restricted if it contains highly offensive language likely to cause serious harm

Section 3A provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains highly offensive language to such an extent or degree that the availability of the publication would be likely, if not restricted to persons who have attained a specified age, to cause serious harm to persons under that age.

“Highly offensive language” is defined in s3A(3) to mean language that is highly offensive to the public in general. The publication does not contain any highly offensive language and is not likely to cause serious harm to young persons.

Publication may be age-restricted if likely to be injurious to public good for specified reasons

Section 3B provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains material specified in subsection (3) to such an extent or degree that the availability of the publication would, if not restricted to persons who have attained a specified age, be likely to be injurious to the public good for any or all of the reasons specified in subsection (4).

The publication does not contain material specified in s3B(3) to such an extent or degree that its availability is likely to be injurious to the public good for reasons specified in s3B(4).

New Zealand Bill of Rights Act 1990:

Section 14 of the New Zealand Bill of Rights Act 1990 (NZBR Act) states that everyone has "the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form". Under s5 of the NZBR Act, this freedom is subject "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Section 6 of the NZBR Act states that "Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning".

While the film deals with matters of violence and horror it does so in a manner that is unlikely to result in injury to the public good and therefore results in an unrestricted publication. As such the rights and freedoms in s14 of the New Zealand Bill of Rights Act 1990 are not impeded in any way in this instance.

Conclusion:

The 35mm film *Happy Feet* is classified as unrestricted with parental guidance recommended for younger viewers. This is due to the low-level sexual references contained in dialogue and song lyrics and to the sometimes disturbing and frightening scenes of characters being menaced by larger mammals or birds and sudden appearances of large man-made vessels and machinery. The feature deals with some serious and sometimes upsetting themes for children. However, the cute and cuddly aspects of the anthropomorphised penguins and the frequent use of humour means that these elements have a reduced impact and are therefore suitable for viewing by a wide range of ages. Nevertheless, these elements are such that younger viewers would benefit from parental guidance.

The Classification Office has considered the effects of the Bill of Rights on the application of the classification criteria elsewhere in these reasons. The classification of this publication does not interfere with the freedom of expression.

Date: 08 March 2007

For the Classification Office (signed):

OFLC No: 700172



Note:

You may apply to have this publication (or these publications) reviewed under section 47 of the Films, Videos, and Publications Classification Act 1993, if you are dissatisfied with the Classification Office's decision.

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