Investigation report no. BI-546

| Summary |  |
| --- | --- |
| **Licensee [Service]** | Channel Seven Adelaide Pty Ltd [Seven] |
| **Finding** | No breach of Clause 2.3.1 [Classification]No breach of Clause 2.5.1 [viewer information consumer advice]No breach of Clause 2.5.2 [viewer information classification symbols] |
| **Relevant Code** | Commercial Television Industry Code of Practice 2015 (revised in 2018) (the **Code**) |
| **Program** | *Miss Peregrine's Home for Peculiar Children* |
| **Description** | A fantasy adventure film about a secret world for children with unusual powers |
| **Date of broadcast** | 21 September 2019 |
| **Date Finalised** | 12 May 2020 |
| **Type of Service** | Commercial—Television |
| **Attachments** | **A** - extracts of the complaint to the ACMA**B** - extracts of the Licensee’s submissions to the ACMA**C** -relevant Code provisions, relevant Guideline provisions and the ACMA’s assessment process  |

Background

In February 2020, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into a broadcast by Channel Seven Adelaide Pty Ltd (the **Licensee**) of *Miss Peregrine's Home for Peculiar Children* on 21 September 2019 at 7.20pm (the **film**).

The ACMA received a complaint alleging that the film, although modified for broadcast, had been incorrectly classified and lacked an adequately prominent classification symbol and consumer advice at the start of the film.

The Film

The film was a fantasy adventure in which the main character, Jake, upon the mysterious death of his grandfather, travelled in search of Miss Peregrine and her home for Peculiar Children. Having arrived at the home, Jake discovered the residents perpetually relived the same day, in constant threat from monsters called Hollows and their leader Mr Barron.

The film was broadcast on Seven at approximately 7.20 pm on 21 September 2019 with a PG classification.

Issue 1: Classification

Finding

The Licensee did not breach clause 2.3.1 of the Code.

Reasons

The complaint was that the film, although modified for broadcast, had been incorrectly classified as PG.

A DVD version of the film was classified M by the Classification Board on 25 October 2016, with consumer advice of ‘fantasy themes and violence, some scary scenes’.

The Licensee submitted that the broadcast version of the film was modified so as to be accommodated at the PG classification.

The Code requires that films that are modified for broadcast are classified under the Classification (Publications, Films and Computer Games) Act 1995 (the **Classification Act**), according to the Guidelines for the Classification of Films 2012 (the **Guidelines**).

To assess compliance with the Code, the ACMA considered the classification of the film against the requirements of the Guidelines. Relevant extracts are at **Attachment C**.

The Guidelines state that content classified PG should be no higher than mild in impact, but may contain material which some children find confusing or upsetting, and may require the guidance of parents or guardians.

The relevant classifiable elements of the film were violence and themes.

*Violence*

In assessing the classifiable element of violence, the ACMA considered whether depictions of violence were mild and infrequent, and justified by context.

The complainant submitted:

The film as screened contains several intense and scary sequences in which children are threatened by single or multiple grotesque and menacing creatures. […] the film as screened contained scenes and sequences that warranted an M classification […].

The Licensee submitted:

The edits made to the Film reduced the impact by deleting some material, by implying certain actions rather than directly showing them, by reducing the duration and detail of some scenes, and by showing some scenes only in wide shot and not close-up.

There were a number of depictions of violence in the film.

Approximately eight minutes into the film Jake’s work colleague fired a handgun at a Hollow when Jake discovered his deceased grandfather in a forest. The Hollow appeared to fall but no injury detail was seen.

At approximately one hour and 20 minutes there was a confrontation between a Hollow and the children in Miss Peregrine’s house. Jake shot the Hollow twice with a crossbow dart. No injury detail was shown. The children escaped.

At approximately one hour and 34 minutes a battle occurred between the Hollows and skeletons brought back to life by one of the children. The violence was unrealistic, slapstick and light-hearted, and the action, set to upbeat dance music, occurred on a crowded amusement pier during the day.

At approximately one hour and 36 minutes the violence involved Mr Barron’s associates and the children using their ‘peculiar’ powers. Although a crossbow and knives were used, no one was struck, and the impact of the scene was tempered by comedic elements such as quips by Mr Barron about poor aim and a request for a mint as he was blown against a wall. The sequence ended after Mr Barrow transformed himself to appear exactly like Jake, only to have a Hollow confuse him for Jake and lift him around his throat with its tentacles. No graphic detail was shown before Mr Barron’s body was dropped to the ground. Jake then shot the Hollow with a crossbow and the Hollow fell to the ground with no injury detail visible.

The film runs for approximately two hours and the depictions of violence were infrequent. The impact of the violence was mild because it was restrained, unrealistic and largely involved monsters being injured or killed, with no graphic injury detail. The impact of the violence was also mitigated by humorous elements, a light tone and the brevity of the depictions. Given the narrative and genre of the film, the inclusion of violence was justified.

*Themes*

The ACMA has considered whether the treatment of themes had a low sense of threat or menace and was justified by context.

The film contained fantasy themes (‘scary themes’ in the consumer advice) that were inextricably linked with violence. The themes were contextually justified within the narrative, where evil monsters pursued the ‘peculiar’ children, who all had unique magical powers.

One of the film’s opening scenes conveyed threat and menace when Jake arrived at his grandfather’s house. The setting was dark and ominous, and a monster appeared out of the dark forest as Jake searched for his grandfather. It was at the end of this scene that the gun violence, referred to above, occurred.

After this opening scene, the tone of the film lightened. Upon arriving on an isolated island off Wales with his father, Jake was confronted with a pair of local teenagers, ‘Worm’ and ‘Dirty Business’, who, claiming to be the ‘sickest rappers in Wales’, provided comic relief.

However, when Jake roamed the ruins of Ms Peregrine’s ‘home’, and the children revealed themselves amongst the ruins, a sense of suspense and tension was again created. Likewise, when Jake headed back to the pub and was confronted by angry locals, a sense of threat and menace was initiated. However, the tension was quickly resolved as Jake escaped and humorously informed the children that ‘I’m special too […] everything was flying and breaking and that was me, I was doing it with my mind’, unaware that there was an invisible boy sitting next to him who had actually been responsible for throwing the items during the children’s escape.

Jake’s next visit to the home contrasted with Jake’s first visit and created a sense of levity as he witnessed the children’s extraordinary but non-threatening magical powers. These powers included being able to float up to the top of a tree (to return a baby squirrel), warming a kettle with bare hands, creating a giant carrot for dinner, and eating dinner with a mouth in the back of her head.

This pattern of tempering suspenseful scenes with lighter ones continued throughout the film. For example, there was a threatening scene where an unconscious boy, Victor, was brought back to life inside the home. While this short scene may be perceived by some viewers as scary, because Victor snapped up from the bed quickly, had no eyes and a dramatic sound effect was used, it was contrasted with the following scenes, where Jake and the children went for a walk on a beautiful day and Jake was taken to an underwater shipwreck.

Similarly, the threat and menace in a sequence in which Miss Peregrine explained to Jake how the Hollows came into existence, and Mr Barron and a Hollow came to the home to kidnap Miss Peregrine and attack the children, was relieved by the positivity of the children overcoming this threat, escaping the home and resurrecting the sunken ship in order to travel to Blackpool to save Miss Peregrine.

As the Licensee has submitted, an important component of the film was the portrayal of the children as ‘determined and resourceful in the face of adversity, supportingone another and finding the courage to use their special abilities to overcome dark forces’. Upon arriving in Blackpool to save Miss Peregrine, throughout the latter part of the film, the children faced the peril of Mr Barron and the Hollows. However, the children were not victims, but took the initiative in confronting Mr Barrow and his offsiders using their intelligence and formidable powers. This gave the audience a sense that the children had some control over their predicament which, when combined with the levity or the unrealistic fight scenes with reanimated skeletons, significantly reduced the sense of threat and menace and the impact of the fantasy themes for younger viewers.

The ACMA agrees with the Licensee’s submission that ‘the cleverness of the children as a force of good and Jake’s heroism all contribute to a positive tone combined with a happy ending’, where all the children escaped unharmed. Jake’s grandfather, who appeared to have been killed in the early scene referred to above, also reappeared, alive after all, which added to the happy ending.

While the film may not be suitable for very young children, the Guidelines state that content classified PG may contain material which some children find confusing or upsetting and may require the guidance of parents or guardians.

The ACMA considers that the ‘scary’ fantasy themes were mild in impact and had a low sense of threat and menace, and that the film was appropriately classified PG in accordance with the Guidelines.

Accordingly, the Licensee did not breach clause 2.3.1 of the Code.

Issue 2: Viewer Information – Consumer Advice

Finding

The Licensee did not breach subclause 2.5.1(a) of the Code.

Reasons

Subclause 2.5.1(a) states that prominent and legible consumer advice must be given at the start of a film classified PG or above.

The complaint was that the film commenced without adequately prominent consumer advice.

The ACMA notes that consumer advice stating ‘some violence’ followed by ‘scary themes’ appeared separately for two to three seconds in the top left corner of the screen during the producer credits at the commencement of the film. The ACMA considers this to have been both prominent and legible.

Accordingly, the ACMA finds the Licensee did not breach subclause 2.5.1(a) of the Code.

Issue 3: Viewer Information – Classification Symbols

Finding

The Licensee did not breach subclause 2.5.2(a) of the Code.

Reasons

Subclause 2.5.2(a) states that classification symbols for a classified Program (including films) must be clearly displayed by a Licensee as soon as practicable after the commencement of a Program.

The complaint was that the film commenced without an adequately prominent classification symbol.

The Licensee submitted, and the ACMA acknowledges, that the PG symbol was shown during the opening producer credits in the top left corner for 10 seconds, providing an adequate warning about the PG classification.

According, the Licensee did not breach subclause 2.5.2(a) of the Code.

Attachment A

Complaint

**Extracts of the Complaint to the Licensee dated 26 September 2019:**

The Classification Board classified this 2016 film as M for ‘Fantasy themes and violence, some scary scenes’ but you have it classified as PG.

[…] complaints are about

1. *The lack of viewer information at the start of a film classified PG or above (CTIC Code para 2.5.1.(a)).*

This film commenced immediately after the end of a news segment. There appeared to be no screening of the film’s title, or of its classification, or of consumer advice information. The opening sequence contains a young boy’s discovery of his grandfather’s dead body, and him seeing a creepy big shadowy figure. Such content can be highly disturbing for children, and para 2.5.1(a) exists to support parents in protecting their children, by putting parents on notice as to the nature of what is about to be screened.

1. *The PG classification assigned by SEVEN (cf the Classification Board M)*

[…] Our review of *Miss Peregrine’s Home for Peculiar Children* (M) in 2016 found in summary that ‘The film’s M rating is well-deserved. It is very dark, menacing and creepy in some parts and the monsters are quite terrifying.’

The film as screened contains several intense and scary sequences in which children are threatened by single or multiple grotesque and menacing creatures. […] does not know if or what images or sequences were removed by SEVEN to justify the lowering of the classification of the film, but contends that the film as screened contained scenes and sequences that warranted an M classification, and as such should not have been screened before 8.30pm.

[…] notes (CTIC para 2.3.1) that films must be classified using the classification system provided by the Classification Act. For a film to be classified PG it must have a ‘low sense of threat or menace’ and any violence must be ‘mild and infrequent’. The film had more than a ‘low threat’, and violence was not both ‘mild and infrequent’ overall. The impact was higher than mild.

***Extracts of the Complaint to the ACMA dated* 21 November 2019*:***

[The] complaints were about the lack of adequate warning of the scary nature of the film at its commencement, and about the PG classification assigned by Seven to the film.

Seven says that the PG classification and consumer advice lines were shown in the top left hand corner of the screen. […] considers that such a warning should have been more prominent and remained for longer so that it could be noticed.

With regard to the PG classification […] remains of the opinion that the film did not have a low sense of threat or menace (see our letter ‘intense and scary sequences in which children are threatened by single or multiple grotesque and menacing creatures’) and the violence was not mild AND infrequent, and that it could not be classified PG.

Attachment B

Licensee’s response and submissions

***Extracts of the Licensee response to the complainant dated 4 November 2020:***

[…]

Section 2 of the Code also stipulates that except for news, current affairs and sporting programs, all material for broadcast (including commercials) must be appropriately classified and once classified it may only be broadcast within the times allowed by that classification. Essentially, each day is divided into classification zones which are based on the majority audience normally viewing at that time.

The Code also allows that films may be modified by a Licensee to ensure they are suitable for broadcast, or for broadcast at particular times. It directs that the suitability of material for broadcast will depend on the context, frequency and intensity of key elements. It will also depend on such factors as the merit of the production, the purpose of a sequence, the tone, the camera work and these factors must all be taken into account and carefully weighed when classifying.

*Miss Peregrine's Home for Peculiar Children* tells the story of a boy called Jacob who finds a mysterious house whose child residents are destined to perpetually relive a particular day because of a spell. Directed by Tim Burton and based on the popular series of children's books by Ransom Riggs, the film was classified M (Mature) by the Australian Classification Board for Fantasy themes and violence, some scary scenes (2016).

For broadcast on 21 September 2019 at 7:20pm, Seven created an edited PG (Parental Guidance) version that carried the PG classification symbol in the top-left corner with consumer advice for scary themes, some violence. Approximately 12 edits were made to the original, including the deletion of the scene containing the most threating scene, the direct threat to Jacob.

Programs classified PG may contain adult themes or concepts but must be mild in impact and remain suitable for children to watch with supervision. Depictions of violence must be inexplicit or restrained but more leeway is permitted when the depiction is stylised and/or unrealistic. Precedents for violence and scary themes in PG films can be found in *Jurassic Park* (1993), *Harry Potter and the Philosopher's Stone* (2001) and *Harry Potter and the Chamber of Secrets* (2002).

The edits made to *Miss Peregrine* reduced the impact by deleting some material, by implying certain actions rather than directly showing them, by reducing the duration and detail of some scenes, and by showing some scenes only in wide shot and not close­up. Seven believe the scenes are comparable to scenes in Harry Potter and others also classified PG. The cleverness of the children as a force of good and Jacob's heroism all contribute to a positive tone combined with a happy ending.

We take great care to ensure the suitability of content for children. Our experienced Classifiers review all material before it goes to air. They are satisfied that the content in *Miss Peregrine* was suited to the PG zone and that it is in compliance with the Code

***Extract of Licensee submission to the ACMA dated 28 February 2020:***

**1. PG Classification**

Clause 2.3.1 of the Code provides that Films must be classified by applying the classification system provided for by the Classification (Publications, Films and Computer Games) Act 1995. The clause is accompanied by a note stating that Films may be modified by a Licensee to ensure they are suitable for broadcast, or for broadcast at particular times.

*Miss Peregrine’s Home for Peculiar Children* tells the story of a boy called Jake who finds a mysterious house whose child residents are destined to perpetually re-live a particular day because of a spell. Directed by Tim Burton and based on the popular series of children’s books by Ransom Riggs, the film was originally classified M (Mature) by the Australian Classification Board for fantasy themes and violence, some scary scenes (2016).

The Film in question was classified PG (Parental Guidance Recommended) for broadcast in accordance with the Code, after edits were made to its original version pursuant to Clause 2.3.1. Consumer advice was given for Scary Themes and Some Violence.

As set out in our response to the complainant […], Seven maintains its view that the Film was appropriately classified PG in accordance with the Code, and broadcast in a PG classification zone.

The Classification Guidelines specify that for Films classified PG:

- Violence should be mild and infrequent and be justified by context.

- Themes should generally have a low sense of threat or menace and be justified by context.

The Guidelines also note that material classified PG may contain material which some children find confusing or upsetting and may require the guidance of parents or guardians. It is not recommended for viewing by persons under 15 without guidance from parents or guardians.

Seven has carefully viewed the Film in question, with specific consideration given to the merit of the production, the purpose of a sequence, the tone, the camera work, the integrity of the narrative and the treatment of the material and is satisfied that the Film was appropriately classified PG in accordance with the Code.

Precedents for restrained violence and scary themes in PG films can be found in *Jurassic Park* (1993), *Harry Potter and the Philosopher’s Stone* (2001) and *Harry Potter and the Chamber of Secrets* (2002), ‘*A Series of Unfortunate Events*’ (2004).

The Film in question is directed by Tim Burton, who is known for his gothic fantasy films such as ‘*Beetlejuice*’ (1988), ‘*Edward Scissor Hands*’ (1990)’ and ‘*Frankenweenie*’ (2012). Tim Burton has a highly stylised and visually striking directorial style which, in this Film is particularly alert to the point of view of children and young people. The stylised visuals throughout the Film ensures the narrative retains its fictional flare for creative storytelling while reducing the impact particularly from a child’s perspective, compared to if scenes were depicted in a realistic manner. His films address children through their imaginative scope, their sense of adventure and humorous and grotesque elements.

*Miss Peregrine’s Home for Peculiar Children* shows the young hero, Jake, who is entrusted with his grandfather’s secret, and must travel through time to meet and save the children. The ‘peculiar’ children he meets each has their own special ability and magical power, while Miss Peregrine herself can transform into a falcon. The Film shows the children as determined and resourceful in the face of adversity, supportingone another and finding the courage to use their special abilities to overcome dark forces.

The edits made to the Film reduced the impact by deleting some material, by implying certain actions rather than directly showing them, by reducing the duration and detail of some scenes, and by showing some scenes only in wide shot and not close-up. By way of examples, the scene with a close up of a knife held directly at Jack’s neck is deleted, many scenes depicting grotesque close ups of various creatures are deleted, and while in the original version a monster is cut in half with depictions of blood spray, the scene was deleted considered too realistic and not in keeping with the PG rating and hence was expressly removed from the edited Film that went to broadcast.

Seven believes the edited version is comparable to similar scenes in *Harry Potter and the Philosopher’s Stone* and other mild fantasy films with child protagonists that have been classified PG. The cleverness of the children as a force of good and Jake’s heroism all contribute to a positive tone combined with a happy ending. These measures ensure the edited Film has a low sense of threat or menace and the violence was mild and infrequent.

**2. Viewer Information – Clause 2.5.1**

Clause 2.5.1 of the Code provides that prominent and legible Consumer Advice must be given at the start of:

a) a Film classified PG or above;

b) all Programs classified M which commence between 7.30pm and 8.30pm;

c) one-off Programs and very short series classified M;

d) any other Program which contains material of a strength or intensity which the Licensee reasonable believes viewers may not expect.

The Film complied fully with this requirement. At the time the Film was broadcast, the opening producer credits TSG Entertainment appears on screen, and in the top left corner the PG symbol is shown accompanied by consumer information for ‘some violence and scary themes’ and remains on screen for a full 10 seconds. Providing an adequate warning of the scary nature of the film at its commencement, and about the PG classification. Hence the display of the classification symbol complies with the guidance provided under the Code.

Attachment C

Relevant Code provisions

***2.1 Classification – General rules***

2.1.1 Subject to the exceptions in section 2.3, all Programs and non-Program material (including Program Promotions) must be:

1. classified in accordance with the criteria set out at Appendix 1; and
2. broadcast in accordance with the classification zones set out at section 2.2.

*Note: For example, a Program Promotion for a Program which is classified M may be broadcast in a PG classification zone, provided that the content of the Program Promotion is classified PG (unless the special care rules at section 2.4 apply).*

***2.2 Classification zones***

2.2.1 **PG Classification zone.** Material that has been classified C, P, G or PG may be broadcast at any time.

 […]

***2.3 Exceptions***

2.3.1 Films must be classified by applying the classification system provided for by the *Classification (Publications, Films and Computer Games) Act 1995.*

*Note: Films may be modified by a Licensee to ensure they are suitable for broadcast, or for broadcast at particular times.*

[…]

***2.5 Viewer information***

2.5.1 Prominent and legible Consumer Advice must be given at the start of:

a) a Film classified PG or above;

[…]

2.5.2 Classification symbols for a classified Program must be clearly displayed by a Licensee:

a) as soon as practicable after the commencement of a Program; and

b) as soon as practicable after a break in the Program (whether due to a Commercial or for another reason).

Relevant Guideline Provisions

**PG - PARENTAL GUIDANCE**

 **Impact test**

The impact of the classifiable elements for material classified PG should be no higher than mild.

Note: Material classified PG may contain material which some children find confusing or upsetting, and may require the guidance of parents or guardians. It is not recommended for viewing by persons under 15 without guidance from parents or guardians.

**Classifiable elements**

THEMES

The treatment of themes should generally have a low sense of threat or menace and be justified by context.

VIOLENCE

Violence should be mild and infrequent, and be justified by context.

[…]

Sexual violence is not permitted.

Assessment and submissions

When assessing content, the ACMA considers the meaning conveyed by the material, including the natural, ordinary meaning of the language, context, tenor, tone, images and any inferences that may be drawn. This is assessed according to the understanding of an ‘ordinary reasonable’ viewer.

Australian courts have considered an ‘ordinary reasonable’ viewer to be:

A person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person does not live in an ivory tower, but can and does read between the lines in the light of that person’s general knowledge and experience of worldly affairs.[[1]](#footnote-1)

Once the ACMA has ascertained the meaning of the material that was broadcast, it then assesses compliance with the Code.

1. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-1)