

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Chief Censor

Title of publication: Suicide Squad
Other known title: Not stated
OFLC ref: 1600736.000
Medium: Film
Distributor: Roadshow Film Distributors
Director: David Ayer
Producer: Charles Roven
Richard Suckle
Country of origin: United States
Language: English

Classification:	Objectionable except if the availability of the publication is restricted to persons who have attained the age of 13 years.
------------------------	---

Excisions: No excisions recommended

Descriptive note: Violence, horror and cruelty

Display conditions: None

	Components	Running time
Feature(s):	Suicide Squad	122:42
Total running time:		122:42

A direction has been given to the Film and Video Labelling Body Inc. to issue a label for this publication.

REASONS FOR THE DECISION

The Office of Film and Literature Classification (Classification Office) examined the publication and recorded the contents in an examination transcript. A written consideration of the legal criteria was undertaken. This document provides the reasons for the decision.

Submission procedure:

A member of the public emailed the Classification Office on 29 August 2016 outlining concerns about the film's unrestricted M classification. The film was cross-rated in July 2016 by the New Zealand Film and Video Labelling Body (FVLB) from its Australian rating of M, with a note for violence and offensive language.

The complainant felt the M rating was inappropriate, outlining content of supernatural horror and violence. They had watched the film at a cinema where some very young children in the audience (2-3 years old) were very upset by this content. Other children (7-8 years old) were clearly confused by the violence. The complainant noted the UK and US classifications of 15 and PG13 respectively. They were particularly concerned at the portrayal of an abusive relationship between two of the characters, and a character who had killed his family. The complainant also compared the film to *Star Wars [The Force Awakens]*, which was also cross-rated in New Zealand from the Australian M classification and which the complainant felt was a "a wholly different nature of film" to *Suicide Squad*. It is noted that the Chief Censor called in *Star Wars: The Force Awakens* for examination, also in response to a complaint by a member of the public who considered that the film warranted a restricted classification. In that case the Classification Office considered that the M classification was appropriate.

On 29 August 2016 the Chief Censor determined under s13(3) of the FVPC Act that *Suicide Squad* should be received for classification.

On 29 August 2016 the Secretary for Internal Affairs, who has automatic right to make a submission, was notified of the decision to examine the publication. The film's distributor was also notified on that date, and as a person with an interest in the publication they were informed of their right to make a written submission on the classification.

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.

Synopsis of written submission(s):

On 2 September 2016 the distributor responded by email with the following submission:

I understand that you have to assess each and every complaint and respect the role of your office, but isn't this evidence of the classification guidelines working perfectly and nothing more than irresponsible parenting? The M classification is unrestricted, but by its very definition is recommended for mature audiences. Taking a 2-3 year old, let alone a 6-7 year old into see this film sounds like a parent who didn't think about the classification at all, or simply couldn't get a babysitter! I don't mean to sound flippant, but these parents seem to be the problem here, not the classification of the film.

Suicide Squad was made by the film makers to be the equivalent of a US rated PG13 in each territory that it releases and include content accordingly. While there are no guarantees given every country has its own guidelines. In Australia and NZ this equates to an M. Any reasonable member of the public who reviews the guidelines for clarity before viewing a film will be left in no doubt whether the film is suitable for their child. For a member of the public to send in a complaint of this nature given it wasn't even his children in the cinema seems a little odd.

Comparing the film to Star Wars or any other M rated film is somewhat irrelevant. There can be M rated horror films and M rated kids films, none of which should be compared to each other. Each film should be assessed on its own content as to how it fits within the guidelines. The violence in Suicide Squad is of no higher impact than permissible under an M classification and we ask that you maintain the current classification.

The Classification Office also spoke with several parents with children aged between 2-10 years old, as well as teenagers, about the film and its M rating. Most parents believed that a restriction was appropriate given the horror, the dark tone, the violence and sexual material. Most would be uncomfortable letting their children watch the film, at least alone. Comments included:

- “Due to the movie using so much violence and a bit of sex stuff, I would have thought it to be rated at least R16. That’s not a movie for children to be watching alone”. This parent noted that their 9-year-old son was excited by the violence.”
- “*Suicide Squad* would be one of the movies that we wouldn’t allow [our young son] to watch until he was a bit older. R13 would be appropriate I think. There’s lots of violence, rude bits for kids, and some monsters that I would imagine younger kids having nightmares about for sure.”
- “I definitely wouldn’t take a kid to it. It’s just a bit too dark. Nothing higher than R13 though.”

One parent believed the M classification was appropriate:

- “I don’t think an R13 rating is warranted as it isn’t that ‘extreme’...We wouldn’t take the kids, even though it is an M. In saying that, we did go to Ghostbusters a couple of weeks ago and [our four year-old daughter] had to leave the theatre...I think the marketing of *Suicide Squad* is definitely targeted older as well, so good judgement would tell you it isn’t appropriate for under 10s.”

The teenagers gave a range of responses. Younger teenage girls were in favour of an R13 classification on the basis of the scary scenes that would frighten children. Older teenage boys felt that the M rating was appropriate and did not seem overly fazed by the stronger material.

Description of the publication:

Suicide Squad is a U.S. superhero action film based on the characters and stories of the DC Comics. Intelligence operative Amanda Waller assembles Task Force X, a dispensable team of imprisoned supervillains, to carry out a dangerous anti-terrorist mission in exchange for clemency. Members include hitman Deadshot, former psychiatrist Harley Quinn, pyro-kinetic

gangster Diablo, thief Boomerang, genetic mutant Killer Croc, and assassin Slipknot. They are joined by a warrior named Katana and placed under the command of Colonel Rick Flag. Waller deploys the squad to extract a high-profile mark from Midway City, which is reported to be under terrorist attack. Meanwhile, Harley's lover, the Joker, attempts to rescue her. One of Waller's intended recruits is Flag's girlfriend, June Moone, an archaeologist possessed by a witch-goddess known as Enchantress. Waller controls Enchantress by keeping her heart in a case. Enchantress breaks free and decides to eradicate mankind. She summons her brother, Incubus, and together they besiege the city with a horde of monsters. En route to their mission the squad is attacked by Enchantress's army. They escape and learn that their mark is Waller herself, who is attempting to cover up her involvement in the plot. The squad abandons Waller to destroy Enchantress and free June. After the success of their mission they are returned to prison with reduced sentences and special privileges. Finally the Joker, who was assumed to have been killed in an attack, breaks Harley out of prison. The film features some well-known actors, spectacular action scenes and an appealing soundtrack of popular music.

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".

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 any s3(1) matters in such a manner that the availability of the publication is likely to be injurious to the public good:

Matters such as sex

Included as a "matter such as sex" is any publication that in terms of s3(1A) -

- (a) ... is or contains 1 or more visual images of 1 or more children or young persons who are nude or partially nude; and
- (b) those 1 or more visual images are, alone, or together with any other contents of the publication, reasonably capable of being regarded as sexual in nature.

The character Harley Quinn is sexualised. Introduced briefly as the Joker's psychiatrist, it is revealed that he had brainwashed her into loving him and helping him escape prison. Upon his escape he subjects her to shock treatment, turning her into the 'wild child' that she is today. Henceforth her character is constructed as girlishly sexy, unruly and provocative. On several occasions her body is the focus of view while she is ogled by men, for instance while dancing seductively at a nightclub and while changing her clothing. At the nightclub, the Joker's gangster friend congratulates him on having a 'bad bitch' for a girlfriend, while the Joker also remarks at his own arousal. At the Joker's prompting Harley offers herself to the friend, apparently with sexual intent. The Joker then shoots the man. In prison, Harley is held in a cage where she performs Burlesque-style acrobatic routines. Guards openly regard her with sexual intent. She speaks provocatively to them, "I'll sleep wherever, whenever and with whoever I want". Upon joining the squad her outfit consists of skimpy clothing and a jacket emblazoned with "Property of the Joker".

Matters such as horror

Horror is pervasive in the form of menacing characters and violence. Some of the more scary characters include Croc, a humanoid covered in scales and who speaks with a growling voice; the Joker, a creepy sociopath with a metal-studded grin; and Enchantress, who alternates in form between a feral woman and sinewy witch with glowing eyes and a threatening voice. Incubus is a gigantic mechanical demon who feeds on humans to gain strength, attacking them with long glowing tentacles. Diablo reveals himself to be a huge, fiery demon who fights Incubus and sacrifices himself for the greater good.

Matters such as crime

The question of whether or not the film promotes or encourages crime is discussed under s3(3)(d).

Matters such as cruelty and violence

These matters are dealt with under s3(3)(a)(i).

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), but none are relevant to this publication.

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). The matters relevant to the publication are:

s3(3)(a)(i) The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with acts of torture, the infliction of serious physical harm, or acts of significant cruelty.

Violence is glamourised within the superhero milieu. In all cases, whether it be prison guard brutality, shootouts or spectacular fighting, violence is intensified by loud sound effects and powerful music. There are some early depictions of cruelty that have quite a strong impact, exacerbated by being inflicted by people in positions of authority and control. Both Deadshot and Harley are provoked into reacting and then punished by antagonistic prison guards. Deadshot retaliates and is restrained and beaten. One strike of the baton is shown before a continued beating is implied off-camera by heavy sound effects. Harley is shocked with a cattle prod, then restrained and force-fed. The Squad members each have a nano-bomb implanted in their necks, designed to be detonated should they rebel or escape. The implantation process sees members restrained while guards inject their necks with a hand-held device, causing them momentary shock and pain. Waller occasionally threatens to kill unruly Squad members, and one man's head is blown off as a warning. At one point Waller has June in a sorry state, strapped to a

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

³ Above n2 at para 29.

bed in her underwear in a drug-induced coma. Waller orders June to channel Enchantress even though it greatly upsets her.

Of note is the Joker's treatment of Harley – essentially an abusive relationship presented as romance. The Joker has brainwashed Harley into loving him to the point that she will do anything for him with no regard for her own safety. A flashback shows that after she helped him escape from prison he tortured her. A brief montage shows Harley gagged with a ball gag and strapped to a gurney while the Joker whispers, "I'm gonna hurt you really, really bad". The use of a ball gag lends the scene a sexualised tone. The Joker applies electrodes to Harley's temples and shocks her, rewiring her brain and turning her into a crazed, subservient girlfriend. Another scene shows him taunting her seductively and asking her if she would die for him. She lovingly agrees, and voluntarily falls several floors into a vat of boiling liquid. The Joker dives in after her, and revives and kisses her. Harley is spellbound by the Joker, oblivious to his controlling behaviour, mistaking it for love. A level of maturity is required to critically approach this complex relationship. There is also a scene in which the Joker takes Harley joyriding and they crash into a river. Batman attends the scene and finds Harley apparently unconscious across the bonnet of the car, having been abandoned by the Joker. When Harley pulls out a knife Batman punches her in the face, knocking her unconscious, then performs mouth-to-mouth resuscitation. However, this too is sexualised by making it appear as if he is kissing her.

The infliction of serious physical harm is extensive but is often fantastical in nature, involving fantasy creatures and spectacular action. Prominent are the numerous shootouts and attacks against creatures. These action scenes are spectacular in nature with frenzied shooting, fighting, explosions and light effects. There is sustained violence against Enchantress' army of 'hostiles'. The hostiles are humanoids covered in black scales, and it is later revealed that these were innocent people who are being used by Enchantress. When they are slain by swords, bats, bullets or other means, they explode or evaporate into dust. The action is edited to show only fleeting detail of bodily harm, but the sheer extent of these killings has a cumulative effect. After all of the hostiles are annihilated the Squad comes for Enchantress and there is more spectacular fighting. Eventually Harley slashes Enchantress's chest and a green glow emits from the wound site. Enchantress dies in an explosion.

There are moments when the violence is more realistic and has more impact, especially when it involves human victims. Enchantress approaches a man in a public restroom and suddenly smashes his head through the mirror, killing him. She summons Incubus to possess the man's body and it morphs into a giant demon. Incubus sets about attacking humans in a subway. The action is frenetic. Amanda unexpectedly and cold-bloodedly shoots several of her staff – this occurs suddenly and the people drop with blood-burst bullet wounds. Each squad member's particular super power is presented as admirable. For example, Deadshot is an elite marksman. When he is recruited he is invited to show off his shooting skills. Using the assortment of guns provided he shoots multiple targets with impeccable aim, eliciting much admiration from prisoners and guards alike. Later he helps his daughter with her homework using a sniper scenario as a maths equation. Diablo is shown emitting bursts of fire from his hands, obliterating a crowd of prisoners around him. He killed his family with this power, an event he clearly laments. A flashback shows him arguing with his wife and then cradling her amidst the burning remains of their home. Another scene shows the Joker laughs as he lies amongst an arsenal of knives and other weapons on the floor of his luxury apartment which gives the violence he inflicts a glamorous tone.

In addition to being forced to join the Squad, characters are sometimes made to perform acts of violence against their will, threatened with death if they disobey orders. In particular, Diablo has

given up his pyrotechnic ways in favour of a life of peace, and Deadshot had promised his daughter he wouldn't kill anymore. Both are pressured into using their abilities for the benefit of a corrupt official.

s3(3)(d) *The extent and degree to which, and the manner in which, the publication promotes or encourages criminal acts or acts of terrorism.*

Crime is promoted to some degree as being justified in certain circumstances. The film lacks a clear moral framework to contextualise the high extent of criminal violence. The plot follows a group of criminals who are presented as heroes being deployed on an anti-terrorist mission by a corrupt government official. Virtually all of the characters perform criminal acts, including the prison guards. Squad members are briefly introduced committing the crimes for which they were imprisoned. They are presented as heroes even though they are criminals, and some are even proud of their crimes. Although there is some attempt to suggest that the characters have an inner moral compass this is negated by the way the violence and destruction they inflict is glamourised and focussed upon in the narrative. For example, although Deadshot's daughter persuades him to stop killing people the viewer sees him undertake a spectacular assassination and later see him killing hordes of creatures. While Diablo has shunned his violent ways for a life of peace after burning his family, the presentation of him as a brooding sexy figure who is seen treating his family in an abusive manner sends mixed messages about domestic violence. Squad members are admired for their criminal proclivities and for being 'bad ass'. Children would likely be confused by this portrayal. Their lack the maturity, knowledge and life experience to objectively analyse the way crime is presented which would likely open the way for their attitudes and world view to be detrimentally affected.

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.

'Shit' is used quite regularly, as are insults such as 'bitch', 'asshole', and 'son of a bitch'. This language is not considered highly offensive but it is unsuitable for children.

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 Classification Office has considered all the matters in s3B(3), but none are relevant to this publication.

Additional matters to be considered:

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

The dominant effect of the film is of a dark and twisted superhero blockbuster in which the heroes are a group of misfit criminals. The film is dominated by scenes of spectacular violence involving fantasy characters.

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

Scenes of violence, cruelty and menacing creatures, combined with booming sound effects, will have a stronger impact in cinemas.

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 latest in the DC film franchise, the film is likely to appeal to comic fans and general audiences alike. The big-name actors are a draw card.

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.

The film targets teenagers and adults. This demographic has the emotional and social maturity to understand the moral ambiguity and conflicting messages around crime and torture. According to the distributor it has been made with international standards of violence in mind, allowing it to be acceptable for family viewing.

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

The film is intended as a form of entertainment.

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

The film has already drawn large audiences in cinemas. It is likely to be released in other formats.

Conclusion:

The film requires restriction due to its treatment of sex, horror, cruelty and violence.

The combination of menacing characters, depictions of cruelty, torture and abuse, and the relentless violence would be frightening, shocking and disturbing to younger children. Older children may well feel able to cope with this material given its fantastical nature, however there is

risk in exposing children to such matters as entertainment. The sheer extent of cruelty and violence has an inuring effect, which would adversely affect the healthy emotional and social development of children.

Regarding the Joker and Harley, a level of maturity is required to critique the complexities of this abusive adult relationship. Not only is Harley objectified by men but her lover treats her with a combination of affection, manipulation and physical cruelty. Impressionable children may be confused by this or be inclined to view this dynamic as normal. As an iconic character, it is likely that younger viewers will favour the Joker and regard the abusive treatment of women as acceptable.

While some other M-rated superhero films contain a comparable degree of violence, they lack the compounding sexually abusive themes, the moral ambiguity around criminal behaviour, and the overlay of pervasive cruelty. The violence in *Suicide Squad* is relentless and the cruelty is sadistic, even sexualised. There is no clear delineation of good and evil, and crime and violence are presented as acceptable in certain circumstances. This is likely to have a negative effect on the attitudes of children toward criminal and violent behaviour.

An M classification makes the film available to children and indicates that there is no likelihood of injury to them. In this case the Classification Office considers that the likelihood of injury to children is too great for the film to be unrestricted. The Office has considered the provisions of the NZBR Act and the need to impose the least restrictive limitation on the right to freedom of expression. Given the limited degree of the actual violence, the superhero/fantasy theme and other pop-culture elements that would appeal to teenagers, it would be unreasonable to restrict the film from them. Most teenagers are less likely to be negatively affected by the stronger content and have the sensibilities to process it as fiction. A restriction to teenagers is justified and the minimum restriction available in order to prevent injury to the public good.

Display conditions:

Where the Classification Office classifies any publication as a restricted publication, it is required under s27(1) of the FVPC Act to consider whether or not conditions in respect of the public display of the particular publication should be imposed.

In considering the issue of public display, the Classification Office must have regard to the matters set out in s27(2) of the FVPC Act, namely:

- (a) *The reasons for classifying the publication as a restricted publication;*
- (b) *The terms of the classification given the publication;*
- (c) *The likelihood that the public display of the publication, if not subject to conditions, or as the case may be, any particular condition, would cause offence to reasonable members of the public.*

Although the title references suicide it does not do so in a manner that is likely to cause offence to reasonable members of the public. There display conditions are not imposed.

Date: 12 September 2016

For the Classification Office (signed):

Note:

You may apply to have this publication reviewed under s47 of the FVPC Act if you are dissatisfied with the Classification Office's decision.

Copyright Office of Film and Literature Classification. This document may not be reproduced in whole or in part by any means in any form without written permission except for brief quotations embodied in articles, reports or reviews.