

Notice of Decision under Section 38(1)

Title of publication:	Welcome to Sex!
Other known title:	Not stated
OFLC ref:	2300319.000
Medium:	Book
Author:	Dr Melissa Kang Yumi Stynes
Publisher:	Hardie Grant Children's Publishing
Country of origin:	Australia
Language:	English

Classification:	Unrestricted.
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Excisions:	None
Descriptive Note:	None
Display conditions:	None

Purpose of this document

1. A member of the public was granted leave to submit this book for classification under section 13(1)(c) of the Films, Videos, and Publications Classification Act 1993 (the Act).
2. Te Mana Whakaatu - Classification Office (Te Mana Whakaatu) has considered submissions before examining and classifying the publication.
3. The publication is classified as an unrestricted publication under section 23(2)(a) of the Act.
4. This document provides the reasons for this classification.

The publication

5. The book is *Welcome to Sex!*. It is 297 numbered pages long plus additional inset pages with author's details etc.
6. The book's title describes the content: it is an introduction to sex for young people. The book covers a number of topics in 21 chapters:

- What is Sex
 - Parents and carers and awkward conversations
 - Getting intimate with myself
 - Orgasms
 - Labels: sexual and gender identities
 - What the outside world is telling us about sex
 - Myths about sex
 - Reasons not to have sex
 - How it begins: feelings, flirting and falling in love
 - What can actually happen with another person?
 - Wobbly starts
 - Relationships
 - Looking after myself and my partner
 - Pregnancy lowdown
 - More sex myths
 - Awkward sex moments and other challenges
 - Is something wrong?
 - Keeping safe
 - Have fun and remember
 - Expand your vocabulary
 - More resources
7. The book is illustrated with cartoons. Love hearts, peaches, bananas, cherries and eggplants are on the covers and early pages of the book as emoji-like images related to sex. Further into the book the illustrations become more explicit. Examples include illustrated genitalia, basic illustrations of a finger entering female genitalia and an erect penis being pulled.
8. There are quotes at regular points where a person reflects on an element of the topic being considered. These quotes come from young people and adults.
9. There are non-explicit illustrations depicting sexual activity. The pages on 'scissoring' have two women with interlocking legs, both wearing underwear. The pages on oral sex have two figures beside each other – they are not touching and both wear underwear.
10. The book describes some sexual practices including oral and anal sex.
11. The book has two authors:
- Yumi Stynes, a broadcaster, writer, and co-creator of 'Ladies, We Need to Talk', an ABC podcast about personal women's issues.
 - Dr Melissa Kang, a GP and adolescent health and sexuality specialist. She wrote a long-running teen magazine advice column called Dolly Doctor for 20 years.

Submissions & Consultations

12. The following people were offered the opportunity to make written submissions on the classification:
- a) The submitter
 - b) A number of correspondents to Te Mana Whakaatu (who expressed similar concerns to the submitter)

- c) The publisher
 - d) The Library and Information Association of New Zealand Aotearoa (LIANZA)
 - e) Public Libraries New Zealand (PLNZ)
 - f) Booksellers NZ Inc. (The Booksellers Association)
 - g) The Secretary for Internal Affairs
13. Te Mana Whakaatu received over 400 submissions. Some submissions were from people or organisations offered the opportunity to make submissions, while other submissions were made by people who had not been offered the opportunity. The vast majority were brief, uninvited submissions.
14. In general terms the submitter and members of the public support a classification which restricts the book. The publisher and the representative organisations submit that the book should be unrestricted. The Department of Internal Affairs elected not make a submission.
15. Where appropriate, reference is made to specific submissions in the text of this document. However, all submissions were considered by Te Mana Whakaatu before making this classification decision.
16. In addition to the submissions received, Te Mana Whakaatu met with a member of Te Poutāhū (Curriculum Centre) at the Ministry of Education to discuss the Relationships and Sexuality Education curriculum within New Zealand schools.

The classification process

17. A classification is a matter of the expert judgment by Te Mana Whakaatu but it is not a reflection of the preferences or opinions of the kaimahi of Te Mana Whakaatu. A classification is a statutory decision and is only made:
- a) following the processes required by the Act
 - b) by considering evidence submitted to it, and
 - c) having regard to the matters that it is required to do so by the Act.
18. When a publication has been submitted, the Act requires Te Mana Whakaatu to examine the publication and classify it as:
- a) unrestricted,
 - b) objectionable, or
 - c) objectionable, except in particular circumstances (also called restricted).
19. The meaning of the word “objectionable” under the Act is a publication that:
- “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.”*
20. The classification process requires Te Mana Whakaatu to determine whether the publication:
- a) deals with matters such as sex, horror, crime, cruelty, or violence (section 3(1)). The Court of Appeal has described this as “the subject matter

gateway". If the subject matter gateway is not met then a publication cannot be objectionable under the Act.

- a) is in the narrow category of publications that are deemed to be objectionable under the Act (section 3(2)).
- b) should be determined to be objectionable or restricted because it deals with the subject matter gateway matters in such a manner that the availability of the publication is likely to be injurious to the public good (section 3(3)). In undertaking this assessment Te Mana Whakaatu must:
 - give particular weight to the extent and degree to which, and the manner in which, the publication deals with specified content, and
 - consider matters specified in the legislation.
- c) is likely to cause serious harm to young persons because:
 - of the extent and degree of highly offensive language (section 3A)
 - it deals with specified material in such a way that it might harm young persons (section 3B).

21. In the classification process, Te Mana Whakaatu must have regard to the New Zealand Bill of Rights Act 1990 (NZBORA). In particular section 14, which provides 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".

22. This freedom is subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
23. In interpreting legislation, wherever possible, the law should be given a meaning that is consistent with the rights and freedoms in NZBORA.
24. If a publication is neither objectionable nor restricted then the classification must be unrestricted. Unrestricted can be described as the default classification. This is reflective of the importance of the right to freedom of expression.

Does the publication meet the subject matter gateway?

25. For a publication to be objectionable it must first deal with matters such as sex, horror, crime, cruelty, or violence.
26. The content in the book relates to sex and therefore clears the subject matter gateway.

Should the publication be "deemed" to be objectionable?

27. There is a category of publications that the Act deems to be objectionable because they promote or support (or tend to promote or support) certain activities listed in section 3(2) of the Act.
28. The Courts have been clear that "promotes or supports" must be given a meaning that impinges as little as possible on the freedom of expression to be consistent with the NZBORA:

*"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."*¹

29. The section 3(2) activity relevant to this publication is the exploitation of children or young persons, or both, for sexual purposes (section 3(2)(a)).

30. The publisher submitted that:

"Welcome to Sex! is designed as a resource available to young people when they are ready and/or curious about sex and sexuality, to help improve their capability, communication skills and knowledge through education, before and as they're becoming sexually active."

31. Some of the submitters who support banning or restricting the book have said that they consider the book to have the opposite effect. They say that the book is "grooming" and would leave young people vulnerable to the attentions of paedophiles due to normalising the sexual conduct described.

32. The majority of the book does not describe or depict sexual acts. The majority of the book deals with issues such as sexual maturity, relationships and societal expectations. The publisher in their submission describes the book accurately:

"Welcome to Sex! has 263 of its 295 pages of content devoted to:

- *how to talk to parents and carers about relationships and sex;*
- *exploring the messages that children and adolescents receive about sex long before they are interested or ready;*
- *respect for and understanding diversity and what this means for different people;*
- *getting to know one's own body and sensations long before becoming intimate with another person;*
- *communication and consent;*
- *where to go for help and a resources section.*

The remaining 32 pages answer the most common questions that young adolescents have asked about specific sexual practices."

33. Te Mana Whakaatu can find no evidence to support the claim that education on sex and sexuality leaves young people open to abuse.

34. The book does not support or promote the exploitation of young people for sexual purposes.

Should the publication be determined to be objectionable?

35. If a publication is not deemed to be objectionable Te Mana Whakaatu must determine whether it should be objectionable or restricted because it deals with the subject matter gateway matters in such a manner that the availability of the publication is likely to be injurious to the public good.

36. Te Mana Whakaatu must:

- a) give particular weight to the extent, degree, and the manner in which the publication deals with specified content in section 3(3), and

¹ *Moonen v Film and Literature Board of Review* [2000] NZLR 9 (CA), para 15.

b) consider the matters specified in section 3(4).

Content to give particular weight to

37. The following section 3(3) content is relevant to this publication:

Section 3(3)(a)(iv): The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with sexual conduct with or by children, or young persons, or both.

38. The book does deal with sexual conduct by young persons, however most of the book does not deal with actual sexual conduct. As discussed above, the book covers a broad range of topics, only a small number of pages cover actual sex practices. The extent that the publication describes and depicts sexual conduct by young people is low.

39. There are illustrations related to sexual practices and matter-of-fact descriptions of those sexual practices. This is the cause of concern expressed by many of the submitters. Submissions received included the following descriptions:

- *Pornographic*
- *Pornography*
- *Explicit sexual material*
- *Porn*
- *Adults only*
- *Explicit in graphic detail*
- *Highly pornographic content.*

40. These are not accurate descriptions of the book. The book is not pornographic – pornography is the depiction of sexual material intended to cause sexual excitement. The book is not intended for sexual gratification. The illustrations in this book are basic, the tone and detail of writing is designed to be informative, and sexual activity is presented in a non-erotic manner.

41. Due to this factual approach the degree that the publication describes and depicts sexual conduct by young people is limited.

42. It is important to note that the book is not a work of fiction, it is best described as educative non-fiction. A work of fiction that covered these issues is likely to be more impactful as the author would seek to engage the reader in the fictional world that the sex was taking place in, and the characters who were having it.

43. There are quotes in the book from young people and adults which describe elements of their own sexual experience, but these are short and not detailed or presented as titillating.

44. The manner that the publication describes and depicts sexual conduct by young people is that it is educative and non-erotic.

Section 3(3)(a)(iv): The extent and degree to which, and the manner in which, the publication promotes or encourages criminal acts or acts of terrorism.

45. Many submitters took the position that the publication should be restricted to those over the age of consent because otherwise the content of the publication encourages criminal acts, that is sexual activity by and on young people under the age of consent.

46. These submissions often contained references to alleged ages the book was for, for example:

- *described as suitable for children from 7 years old*
- *aimed at 10 – 15-year-olds but the authors would be happy for "mature and smart 8-year-olds to have a flick through"*
- *this is a book for 12-year-olds*
- *aimed at 12-year-olds*
- *the authors suggest that children as young as 8 years old should read it.*

47. Te Mana Whakaatu has not investigated the source of these statements. The publisher's submissions say that the book was designed as a resource for "young people when they are ready and/or curious about sex and sexuality". It is reasonable to assume that this interest will arise in adolescents of diverse ages.

48. In New Zealand a person must be over the age of 16 to consent to sex. There are resources which deal comprehensively with the issue of the legal age of consent (for example YouthLaw Aotearoa's webpage on the issue²). This book is not one of those.

49. Page 119 of the book deals with the law about sex. The book states:

"In Australia and New Zealand the age of consent is 16 or 17 depending on which state or territory you live in. This means if you're under this age and a person who is older has sex with you they are breaking the law BUT if the age difference is small - less than two of three years depending on where you live - the law might take this into account."

50. This is not a complete statement of the law in New Zealand. The law says it is unlawful to have sex with anyone under the age of 16 and, as the YouthLaw website says, "*If you're both under 16, the law says that you're both committing a crime*".

51. This unfortunate incomplete statement of the law is further emphasised by the explanation for the law provided by the book which says that "*the law is in place to protect teens from being abused by older people - or people in positions of power, such as a teacher, coach, police officer, religious instructor or foster carer.*" All of which is true however it is not the complete position and in New Zealand it potentially misleads the reader about the law.

52. The bottom of the page on consent has two illustrated 'proof of age' cards with '16+' and '17+' written on them respectively and 'Pass' in writing.

53. The page that asks, "How do I know I am ready?"³ does not reference the age of consent, although it refers to the page on consent⁴ (which itself does not reference the law relating to the age of consent). It is notable that the authors have also written a book on the issue of consent called *Welcome to Consent!*, which they reference in *Welcome to Sex!*

² <https://youthlaw.co.nz/rights/sex-relationships/when-can-i-in-relationships>

³ Page 126

⁴ Page 141

54. Te Mana Whakaatu does not consider that the authors' choice to summarise the law of consent for jurisdictions in New Zealand and Australia promotes or encourages underage sex.
55. The question to be answered in classifying this book is not how accurately certain pages of it reflect New Zealand's age of consent law. The classification question is in what manner, and to what extent and degree, does the entire book promote or encourage the criminal act of underage sex.
56. While this book is more descriptive than the information which will be provided in New Zealand schools, curriculum guidelines for New Zealand children at level 4 (between years 6 and 11) address intimate relationships, conception and contraception.
57. Education on sex and sexuality does not seem to encourage underage sex. In fact, research⁵ has found that sex education results in:
- Delayed initiation of sexual intercourse
 - Decreased frequency of sexual intercourse
 - Decreased number of sexual partners
 - Reduced risk taking
 - Increased use of condoms
 - Increased use of contraception

Matters that must be considered

58. Te Mana Whakaatu must consider the following matters.

Section 3(4)(a): The dominant effect of the publication as a whole.

59. The dominant effect of the publication is that it is an educational book for young people.

Section 3(4)(b): The impact of the medium in which the publication is presented.

60. The publication is a small, colourfully illustrated book. The illustrations, size and conversational text style are likely to appeal to young people.

61. The book is clearly about sex, as is written in very large letters on the front cover. It is unlikely to be mistaken for a book on another subject.

Section 3(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.

62. The character of the publication is that of an educational resource for young people about sex and sexuality.

Section 3(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.

⁵ UNESCO International Technical Guidance on Sexuality education (2018) reviewed 87 separate studies about the pros and cons of sex education (<https://unesdoc.unesco.org/ark:/48223/pf0000260770>).

63. The book is likely to be made available to young people who are curious about sex and/or their parents.
64. Some submitters were concerned that this book was being made available in schools. Te Mana Whakaatu has no evidence that the publication is being made available or being taught in schools and notes that the law requires Boards of Trustees to consult with school communities at least once every two years on how the school will implement Relationships and Sexuality Education⁶.

Section 3(4)(e): The purpose for which the publication is intended to be used.

65. The book is educational in purpose.

Section 3(4)(f): Any other relevant circumstances relating to the intended or likely use of the publication.

66. One of the most important aspects to consider in relation to this book is the context in which the young person may come to read it. The publisher provided submissions in relation to this point:

“Australian research shows that there is a broad range of interest in and experience of any intimate encounters during the adolescent decade (10-19). The profound changes that occur mean that some people will engage in sexual activity as young as 11 or 12, while others will not have any sexual experience until much later and well into adulthood. Take, for example, the following Australian national research statistics:

- *Australian national school survey research in 2018 showed that among 1,632 Year 10 students⁷:*
 1. *83.9% of students had touched their own genitals;*
 2. *54% and 55.4% of students had touched a partner's genitals or been touched on their genitals respectively;*
 3. *39.1% had given and 38.1% had received oral sex;*
 4. *32.8% had had vaginal sex; and 8.4% had had anal sex (7.7% of females and 9.6% of males.*

Those percentages increase in year 11 and 12. Among all students in years 10, 11 and 12 (a sample of 6327 students), between 30% and 50% had engaged in various sexting behaviours.

- *The most recent research of secondary school students found that the mean age of first viewing pornography was 13.8 years.*
- *Research shows that young women experience the highest rates of sexual violence. For example, of almost 145,000 victims of sexual assault recorded by police agencies between 2014 and 2019, 83% were female and 63% under the age of 18.*

Because of the wide variation in adolescent experience, health experts consistently emphasise the importance of talking to children and adolescents in matter-of-fact ways about their bodies, feelings, relationships and sex from a young age, when they show interest and/or it becomes relevant.”

⁶ Section 91 of the Education and Training Act 2020

⁷ Year 10 in Australia is Year 11 here so 15–16-year-olds rather than 14–15-year-olds. Similarly, Year 11 is the equivalent to Year 12 and Year 12 to Year 13.

67. There is recent research from Australia that looks at young people's attitudes towards online pornography. The Australian eSafety commissioner released a report this year⁸ after surveying 1004 young people aged 16–18. The report found that:

- online pornography is prevalent in the online lives of young people, with 13 being the average age when they first encountered it.
- 75% of 16–18-year-olds surveyed had encountered online pornography.
- most (74%) young people first encountered online pornography unintentionally, either by accident or when shown it by another person.
- education was seen by young people as the most helpful tool for mitigating the harmful impacts that could arise from encounters with online pornography.

68. There is strong evidence that these issues are equally relevant for New Zealand young people. For example:

- Ministry of Health research published in 2019 indicated that 20% of adults had had sex before they were 16 years old.⁹
- Te Mana Whakaatu's own research on porn¹⁰ found that:
 - One in four (27%) have seen pornography by age 12, and a majority (53%) have seen pornography by age 14.
 - 75% of young people have seen pornography by age 17.
 - 71% of young people were not looking for pornography when they first saw it.
 - Many young people use pornography as a way to learn about sex (54% of recent viewers).

69. In these circumstances it is to be expected that young people, and their parents, may wish to seek out educational information about sex and sexuality rather than relying on pornography or ill-informed direct experience.

Age Restriction

70. A publication may be restricted to people who have attained a specified age if it is likely to cause serious harm to persons under that age due to the extent or degree of highly offensive language (section 3A of the Act).

71. A publication may also be age-restricted to people who have reached a certain age if it deals with certain material specified in section 3B(3) to such an extent or degree that the availability of the publication would, if not restricted, be likely to result in one of the harms specified in section 3B(4).

⁸ Young people's attitudes towards online pornography and age assurance <https://www.esafety.gov.au/research/young-peoples-attitudes-towards-online-pornography-and-age-assurance>

⁹ See First Heterosexual Sex: Findings from the 2014/15 New Zealand Health Survey <https://www.health.govt.nz/publication/first-heterosexual-sex-findings-2014-15-new-zealand-health-survey>

¹⁰ Te Mana Whakaatu conducted research over porn and its effects on young people from 2018 to 2020. The reports are publicly available at <https://www.classificationoffice.govt.nz/resources/research>

Language

72. The book contains words related to the sex, including slang words for genitals and sexual activities. Page 46 for example lists nicknames such as 'lips', 'petals', 'flaps', 'fanny flaps' and 'pussy' for vulva, and 'doodle', 'dick', 'cock', 'John Thomas', 'member' and 'willy' for penis. The use of these words is to illustrate the variety of words commonly used for genitals. The book takes a similar approach to sexual activity.
73. Te Mana Whakaatu does not consider these words to be highly offensive language. The public in general is unlikely to find the language used highly offensive.

Specified material

74. Some submissions have raised an issue in relation to the pages on anal sex. A number of these submitters reference the risk of anal sex for women reported in an August 2022 article¹¹. This is relevant to section 3B(4) in that anal sex may be an example of conduct that, if imitated, would pose a real risk of serious harm to self or others or both.
75. The anal sex section covers two short pages (pages 167 & 168) and talks about cleanliness, lubrication, the myth that gay sex requires anal sex, and explains why most teens don't have anal sex due to the potential for pain. There is a quote from an 18-year-old which says, *"The people I've been sexual with, if you're cuddling and having sex talk, when I ask 'what's off limits for you?' Most of them say anal"*.
76. Only a certain amount of information can be put into a single book and any author of an educational book must exercise some discretion about what information to put into it. This book provides some guidance around the issues related to anal sex but it does not provide a step-by-step how-to guide for anal sex, nor does it present as comprehensive. The book does not depict imitable conduct, rather it provides some education about a sexual practice.

Classification Decision

77. Having regard to the above matters Te Mana Whakaatu has concluded that:
- a) "Welcome to Sex" does not promote and support the exploitation of children or young persons. It is not pornography. It is an educational book on the issue of sexuality, relationships and sex.
 - b) Sexual conduct by young people is represented in an approachable and educational way. The book is franker and more direct than some other sex education books and, in a small number of the 297 pages, provides (with a certain amount of detail) information on sexual activities.
 - c) Books such as this are a social and educational resources for young people and their parents. Research indicates that teens, from an early age, are presented with explicit representations of sex through online pornography, which are often inaccurate and unhealthy representations.

¹¹ <https://www.theguardian.com/society/2022/aug/11/rise-in-popularity-of-anal-sex-has-led-to-health-problems-for-women>

- d) The book could have provided more advice on some issues, for example the age of consent or the negative aspects of some sexual practices. However any book, particularly a book of this size, requires some editorial decision-making. The editorial decisions in this book do not make it injurious to the public good.
- e) In New Zealand the law respects a parent's right to choose whether their children should receive sexuality education in school¹². Submitters made the point that parents should have the right to choose whether their children could read this book. Te Mana Whakaatu agrees and imposing an age restriction to this publication would prevent that choice.
- f) In the absence of any injury to the public good from the availability of this book, Te Mana Whakaatu is required to classify it as an unrestricted publication under section 23(2)(a) of the Act.
- g) The law does not allow Te Mana Whakaatu to direct that unrestricted books are labelled, such as occurs with films. If the law allowed, Te Mana Whakaatu would have labelled this book 'M'. The M label would indicate that the book would be suitable for those 16 years and older but does not impose a legal restriction. Parents make choices about allowing their children much younger than 16 years to consume M-rated media.
- h) Te Mana Whakaatu will send this decision to the representative bodies of libraries and booksellers with the invitation that they may make use of this classification to determine where and how they make this book available for readers.

Date: 22 November 2023

Important Note:

If you are dissatisfied with the Classification Office's classification you may be able to apply to have the publication(s) reviewed by the Film and Literature Board of Review under section 47 of the Films, Videos, and Publications Classification Act 1993 (the Act).

Details about the review process, including deadlines for seeking a review, are available on the Department of Internal Affairs website.¹³

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¹² Section 51 of the Education and Training Act 2020

¹³ <https://www.dia.govt.nz/Agency-Film-and-Literature-Board-of-Review-Index>