



Investigation Report No. 2070

File no.	ACMA2008/1619
Licensee	Queensland Television Ltd
Station	QTQ
Type of service	Commercial Broadcasting Service (Television)
Name of program	<i>Ramsay's Kitchen Nightmares – Dillons</i>
Date/s of broadcast	8 April 2008
Relevant legislation/code	<i>Broadcasting Services Act 1992</i> , section 148 Commercial Television Industry Code of Practice 2004: <ul style="list-style-type: none">• Clause 2.4 (Classification of Other Material)• Clause 4.3 (M Classification – Language) of Appendix 4 (Television Classification Guidelines)

Investigation conclusion

The Australian Communications and Media Authority (ACMA) finds that the program *Ramsay's Kitchen Nightmares - Dillons* broadcast by Queensland Television Ltd, the licensee of QTQ, on 8 April 2008 contained frequent use of coarse language which was not particularly important to the storyline or program context. ACMA therefore considers that the licensee incorrectly classified the program M according to clause 4.3 of the Television Classification Guidelines set out at Appendix 4 of the Code, and breached clause 2.4 of the Commercial Television Industry Code of Practice 2004 (the Code) in relation to this broadcast.

The complaint

The Australian Communications and Media Authority (ACMA) received a written complaint about an episode of *Ramsay's Kitchen Nightmares* broadcast on 8 April 2008. The complainant alleged that the M-classified program contained offensive coarse language. Not satisfied with the written response provided by the licensee, the complainant forwarded the matter to ACMA for investigation.

The program

Ramsay's Kitchen Nightmares is a reality television program in which the host, celebrity chef Gordon Ramsay, attempts to rehabilitate failing restaurants. This episode concerns Ramsay's attempt to save New York restaurant, Dillons. The program was broadcast at 8.30pm. It was classified M and was preceded by a consumer advice warning which stated that the program contained: 'Frequent Coarse Language'.

Assessment

The assessment is based on a copy of the relevant broadcast, provided to ACMA by the licensee and submissions from the complainant, the licensee and the Nine Network.

The *Broadcasting Services Act 1992* (the BSA) requires the commercial television industry to develop codes of practice relating to programming matters, including classification of material and specification of time zones in which material classified other than G can be broadcast. In relation to these matters, the Code:

- Reproduces guidelines made under the Classification Act for the classification of films, and also contains the Television Classification Guidelines which apply to material other than films and news and current affairs programs.
- Requires broadcasters to supply consumer advice on certain material. Consumer advice gives viewers information about particular classifiable elements that have contributed to a program's classification and intends to assist viewers in making informed choices about the type of programming that is suitable for them and their families to watch.
- Proscribes the broadcast of certain types of material under any circumstances.

The BSA also requires ACMA to investigate unresolved complaints about matters covered by the Code.

The objectives of the classification scheme set out in the Code include that:

- Each broadcast day is divided into classification zones which are based on the majority audience normally viewing at that time, with particular regard to the child component of the audience
- Only material which is suitable for a particular classification zone is broadcast in that zone

As the program was classified M, the Code requires that it be classified in accordance with clause 4 of the Television Classification Guidelines set out in Appendix 4 of the Code.

Relevant provisions

The Code contains the following provisions that are relevant in the matters raised by the complainant:

SECTION 2: CLASSIFICATION

...

Classification of Other Material

2.4 *All other material for broadcast:* Subject to Clauses 2.3 and 2.4.1, all other material for broadcast must be classified according to the Television Classification Guidelines (set out in Appendix 4) or, where applicable, the stricter requirements of Section 3: Program Promotions and Section 6: Classification and Placement of Commercials.

...

Appendix 4: Television Classification Guidelines

The Mature (M) Classification

4. Material classified M is recommended for viewing only by persons aged 15 years or over because of the matter it contains, or of the way this matter is treated.

4.2 *Language:* The use of coarse language must be appropriate to the story line or program context, infrequent and must not be very aggressive. It may be used more than infrequently only in certain justifiable circumstances when it is particularly important to the story line or program context.

Complainant's submissions

The complainant expressed concern about the frequency of coarse language contained in the program, specifically, "the offensiveness of Ramsay's excessive, constant and unwarranted swearing".

Licensee's submissions

The Nine Network initially submitted that the program was correctly classified M:

Nine believes that the coarse language used in the Programs complies with the M classification provisions.

...

[The] episode contained 43 uses of fuck or its derivatives amounting to 0.7% of all spoken words.

Nine believes that such small percentages of coarse language use can be described as minimal relative to the programs total spoken language and therefore not 'frequent' for the purposes of the Code. Nine notes that while the consumer warnings provided apply the term "frequent coarse language", this is as a result of the lack of appropriate consumer advice for "infrequent coarse language" available to the licensee. Historically, Nine has used the term "some coarse language" when there are less than 20 instances of coarse language within a 1 hour program. Conversely, Nine applies the advisory "frequent coarse language" when there are more than 20 uses.

...

Nine also notes a relevant test for determining frequency is whether or not the ordinary reasonable viewer would consider the coarse language use frequent... Due to the low percentage of coarse language use and high viewer numbers, Nine believes the Programs comply with the provisions of clause 4.3 of Appendix 4 in terms of frequency.

...

Gordon Ramsay's "warts and all" approach to the restaurant rescues is integral to the program context. Nine maintains that Gordon Ramsay's language differentiates the Programs from other similar programs. While the language could be removed, his use of coarse language is accepted by viewers as part of the reality of Gordon Ramsay's kitchen environment.

...

Nine believes that Gordon Ramsay's language is more justified than in some scripted dramas, where language is manufactured and not necessarily based in reality.

The licensee's response of 29 October 2008 to ACMA's preliminary report stated that it accepted the proposed breach finding:

Nine has offered a range of undertakings in relation to earlier breach findings into episodes of the Ramsay's Kitchen Nightmares series. These include a requirement to classify all future episodes of the Gordon Ramsay's programs *Hells Kitchen*, *Boiling Point*, *The F Word*, *Ramsay's Kitchen Nightmares* and *Kitchen Nightmares USA* as MA under the Code. We have also offered to provide ACMA with reports of compliance with the undertakings and weekly complaints handling reports for the duration of the 2009 broadcasts of the programs.

Nine seeks to extend the enforceable undertakings offered for these earlier breaches to the Reports as they are part of the same series of programs broadcast earlier this year.

Reasons for decision

The Television Classification Guidelines establish a scale for the use of coarse language that is permissible at each classification, ranging from very mild coarse language, which is permissible in G-classified programs in certain circumstances, to very coarse language, which is permissible in MA-classified programs when appropriate to the story line or program context and not overly frequent or impactful. As noted above, the guidelines for M-classified programs only permit the use of coarse language that is:

- appropriate to the storyline or program context,

- infrequent, and
- not very aggressive.

Such language ‘may be used more than infrequently only in certain justifiable circumstances, when it is *particularly important* to the storyline or program context’ (emphasis added).

As noted above, the licensee submitted that coarse language contained in the program was both infrequent, and particularly important to the story line or program context.

Whether the program contained frequent coarse language

The Nine Network has argued that 43 instances of ‘fuck’ language amount to less than 1 per cent of spoken words over the 60 minute period (including time occupied by news and commercial breaks), and that viewers would regard this proportion of coarse language as infrequent. However, it has not demonstrated that viewers perceive coarse language in this way, other than referring to the number of viewers who are estimated to have seen the program, as an indication of community acceptance of the material.

ACMA does not accept that viewers of television programs are likely to perceive the frequency of coarse language as a percentage of the total words spoken in a program. ACMA considers that the ordinary meaning of ‘frequency’ implies assessment of the number of times an event occurs in a given period. The Macquarie Dictionary defines ‘frequent’ and ‘infrequent’ in the following terms:

frequent /'freekwuhnt/ adjective; /fruh'kwent/ verb – adjective

1. happening or occurring at short intervals: *to make frequent trips to a place.*
2. constant, habitual, or regular: *a frequent guest.*
3. at short distances apart: *a coast with frequent lighthouses.* - verb (t)
4. to visit often; go often to; be often in.

....

infrequent /in'freekwuhnt/.adjective

1. happening or occurring at long intervals or not often: *infrequent visits.*
2. not constant, habitual, or regular: *an infrequent visitor.*
3. not plentiful.

ACMA therefore considers that viewers are likely to perceive the frequency of coarse language in terms of the number of times it is heard in a program, having regard to the length of the program, and that 43 uses of coarse language in a 60 minute period is likely to be regarded as frequent coarse language by viewers, regardless of the total number of words spoken during that period. ACMA does not accept that the coarse language could be regarded as happening or occurring at long intervals or not often.

For the above reasons ACMA considers the program contains frequent coarse language.

Whether the frequent coarse language was particularly important

In relation to whether the frequent use of coarse language was *particularly* important to the story line or program context, the Nine Network has argued that the program

context is a 'real life portrayal of a restaurant kitchen' where the language reflects how the kitchen workers speak in the real world, and that Ramsay's language 'helps draw the audience in to the real life drama they are witnessing'. ACMA considers that the program could also be characterised as a 'reality television' program which depicted the rehabilitation of a failing restaurant through changes to its menu and interior design, under the guidance of successful celebrity chef and restaurateur, Gordon Ramsay. In either case, it is noted that almost all of the coarse language in the program is used by Ramsay, both in the course of confrontations with the restaurateurs and colloquially as an amplifier. Ramsay's use of coarse language is one aspect of his confrontational style and boisterous personality, but it is not considered that his propensity to use coarse language is of itself *particularly* important to the program's story line or context. The language bears little relationship to the changes that Ramsay makes to the business, other than it features in his conversations with the owner, chef, and other staff. While the coarse language may have an impact on viewers and 'draw them in', this does not equate to the language being *particularly* important to the story line or program context.

ACMA also considers that the characteristics of some personalities, environments and situations are such that the coarse language associated with them may not be able to be faithfully portrayed in every detail in an M-classified 'reality television' program, and for this reason the Television Classification Guidelines provide a higher classification for material that is of higher intensity. If taken to their limits, the inclination of a character to use coarse language, the nature of a particular working environment, or other characteristics of 'real life' situations may otherwise justify any amount of such language in an M-classified 'reality television' program.

ACMA notes that on 16 June 2008 The Classification Board classified a DVD containing the program MA15+, with the consumer advice, 'Strong coarse language'. However, the Classification Board's Guidelines for the Classification of Films and Computer Games state that for M-classified films, 'Coarse language may be used. Aggressive or strong coarse language should be infrequent and justified by context'. The Commercial Television Industry Code of Practice requires that programs other than films broadcast on commercial television must be classified according to the Television Classification Guidelines set out in Appendix 4 of the Code, which contain different requirements, these requirements include restrictions on the circumstances under which coarse language may be used, its frequency and its tone, discussed above.

Decision

I, Andree Wright, Executive Manager, Content, Codes and Education Branch, being the appropriate delegated officer of the Australian Communications and Media Authority, determine for the above reasons that Queensland Television Ltd, the licensee of QTQ, in relation to the broadcast of *Kitchen Nightmares – Dillons* on 8 April 2008:

- breached clause 4.3 (M Classification – Language) of Appendix 4 of the Commercial Television Industry Code of Practice (July 2004); and
- breached clause 2.4 (Classification of Other Material) of the Commercial Television Industry Code of Practice (July 2004).

Signed: Andree Wright
Andree Wright

Dated this 11 day of November 2008