



Investigation Report No. 2017

File no.	ACMA2008/1258
Licensee	Channel Nine South Australia Pty Ltd
Station	NWS
Type of service	Commercial Broadcasting Service (Television)
Name of program	<i>Underbelly – Episodes 1 & 2: The Black Prince / The Sorcerer's Apprentice</i>
Date/s of broadcast	13 February 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 4.1 (M Classification – Violence) of Appendix 4 (Television Classification Guidelines)• Clause 4.2 (M Classification – Sex and Nudity) of Appendix 4 (Television Classification Guidelines)• Clause 4.3 (M Classification – Language) of Appendix 4 (Television Classification Guidelines)

Investigation conclusion

The Australian Communications and Media Authority (ACMA finds that in the program *Underbelly – Episode 1 (The Black Prince) and Episode 2(The Sorcerer's Apprentice)* broadcast by Channel Nine South Australia Pty Ltd on 13 February 2008:

- Depictions of violence in scenes at approximately nine minutes, 55 minutes, 81 minutes and 106 minutes were infrequent, not of high impact and justified by the story line dealing with Melbourne's gangland killings. The violence was not presented as desirable in its own right.
- A depiction of intimate sexual behaviour in a scene at four minutes was implied in a restrained way, due to the brevity of scene and lack of visual detail. The depiction was justified by the story line, in the context of a scripted drama.
- Visual depictions of nudity in scenes at four minutes, 33 minutes and 67 minutes were justified by the program context and were not detailed.
- Coarse language is used but it is not very aggressive, and not frequent in the context of the program as a whole.

Therefore the licensee correctly classified the program M in accordance with the guidelines at clause 4 (The Mature (M) Classification) of the Television Classification Guidelines in Appendix 4 to the Commercial Television Industry Code of Practice 2004 and did not breach clause 2.4 (Classification of Other Material – All Other Material for Broadcast) of the Code in relation to this broadcast.

The complaint

The Australian Communications and Media Authority (ACMA) received a written complaint about two episodes of *Underbelly* broadcast together on 13 February 2007.

The complainant alleged that the M-classified program contained offensive sexual material and coarse language. In correspondence to ACMA the complainant also objected to the depiction of ‘explicit deadly violence’ and ‘gratuitous nudity’.

Not satisfied with the written response provided by the licensee, the complainant forwarded the matter to ACMA for investigation.

The program

Underbelly is an Australian series dramatising the 10 year gangland war in Melbourne. The program focuses on the bloody rivalry between Carl Williams and the ‘Carlton Crew’ and the efforts of the Victorian police.

These episodes follow the rise and fall of Alphonse Gangitano, the self-proclaimed ‘Black Prince of Lygon Street’ including the murder of Greg Workman by Gangitano, his efforts to avoid prosecution, his subsequent arrest for assaulting nightclub patrons, and his murder by Jason Moran.

The program was classified M and was preceded by a consumer advice warning which stated that the program contained: ‘Strong Violence, Frequent Coarse Language, Strong Sex Scenes, Nudity’. This consumer advice warning was repeated on return from each commercial break.

Assessment

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

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 Commercial Television Industry Code of Practice 2004 (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.

As the program was classified M and broadcast during an M time zone, 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 complainants:

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.

4.1 Violence: May be realistically shown only if it is not frequent or of high impact and is justified by the story line or program context. Violence should not be presented as desirable in its own right. Any visual depiction of or verbal reference to violence occurring in a sexual context must be infrequent and restrained, and strictly justified by the story line or program context.

4.2 Sex and nudity: Visual depiction of intimate sexual behaviour may only be implied or simulated in a restrained way. It must be justified by the story line or program context. Verbal references to sexual activity should not be detailed. Visual depiction of nudity must be justified by the story line or program context, and must not be detailed if in a sexual context.

4.3 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

In relation to the program's classification, the complainant expressed concern about depictions of violence which they allege are of high impact and therefore excluded from the M and MA categories. The complainant also objected to the use of frequent coarse language which 'contributes to the normalisation of this type of aggressive language in the community' and offensive sexual material.

Licensee's submissions

Channel Nine South Australia Pty Ltd (a division of WIN Corporation), the licensee of NWS, broadcasts Nine Network Australia programs in accordance with a program supply agreement with the Nine Network, and as a consequence relies on the Nine Network for classification advice. Channel Nine South Australia and the Nine Network have both made submissions in relation to the broadcast of this program.

The licensee and the Nine Network submitted that the program complied with the Code noting that:

- Acts of violence depicted fall within the M classification guidelines. The series is based on real events and it essential for the storyline to portray as honestly as possible the ongoing anti-social behaviour practiced by the crime figures.
- Depictions of sexual activity are only implied in a restrained way. When intimate sexual activity is depicted, camera angles obscure much of the visuals.
- The use of coarse language by criminals and their associates is justified as it is a defining element of their behaviour.
- While the series is for adult audiences, the licensee took appropriate steps to ensure that viewers were well informed of the program's content with detailed consumer advice warnings.

Finding

The Australian Communications and Media Authority finds that in the program *Underbelly – Episode 1 (The Black Prince) and Episode 2(The Sorcerer's Apprentice)* broadcast by Channel Nine South Australia Pty Ltd on 13 February 2008:

- Depictions of violence in scenes at approximately nine minutes, 55 minutes, 81 minutes and 106 minutes were infrequent, not of high impact and justified by the story line dealing with Melbourne's gangland killings. The violence was not presented as desirable in its own right.
- A depiction of intimate sexual behaviour in a scene at four minutes was implied in a restrained way, due to the brevity of scene and lack of visual detail. The depiction was justified by the story line, in the context of a scripted drama.
- Visual depictions of nudity in scenes at four minutes, 33 minutes and 67 minutes were justified by the program context and were not detailed.
- Coarse language is used but it is not very aggressive, and not frequent in the context of the program as a whole.

Therefore the licensee correctly classified the program M in accordance with the guidelines at clause 4 (The Mature (M) Classification) of the Television Classification Guidelines in Appendix 4 to the Commercial Television Industry Code of Practice and did not breach clause 2.4 (Classification of Other Material – All Other Material for Broadcast) of the Code in relation to this broadcast.

Reasons

Assessment of a program's classification requires consideration of the intensity and frequency of the classifiable elements, and it is necessary to consider the impact of individual elements in each scene, as well as the cumulative impact of the elements in the context of the entire program.

Violence

The program contains several scenes of violence, including realistic depictions of violence:

- A scene at approximately nine minutes shows the character of Alphonse Gangitano implicitly shoot Greg Workman several times in the chest. The scene is intercut with Jason Moran scrambling out of bed at the sound of the shots. Gangitano also implicitly shoots Workman while he is on the ground. None of the shots are shown to impact the body. The body is later shown with a bloody shirt. The scene is very dimly lit, significantly reducing its impact.
- At approximately 55 minutes Gangitano and Jason Moran enter a nightclub to recover a debt. When they are unable to find the owner, Gangitano and Moran implicitly attack patrons with pool cues. The scene is intercut with shots of the victims receiving treatment including a woman with a bandaged face and a man holding his bloody head. Gangitano is apprehended by police and at 62 minutes is shown photos of the victim's bloodied faces. The scene is highly stylised with slow and fast motion action, neon lighting and no synchronised sound. Blows implicitly connect, although the impacts are obscured.
- At approximately 69 minutes police arrest Moran, implicitly striking him with a pistol, resulting in a bloody face.
- At approximately 81 minutes Gangitano and Moran fight in a carpark, trading punches. Gangitano implicitly punches Moran in the face. He falls to the ground, his nose bleeding and starts fitting.
- At approximately 106 minutes Moran implicitly shoots Gangitano in the back. The impact of the shots is not shown. Later Gangitano is shown lying on the floor, bloody marks on the back of his dressing gown, a pool of blood beneath him. The scene is very brief.

The depictions of violence are not frequent in the context of the two-hour program. While some depictions are realistic, they are relatively brief, visually discreet and lack

detail. Other depictions, such as the nightclub assault, are highly stylised, significantly mitigating their impact. The impact of the violence is not high. The violence is not presented as desirable in its own right as the character of Gangitano, responsible for most of the violence, is portrayed as out of control, his behaviour causing him to lose his family and eventually his life.

Sex and nudity

The program contains three scenes depicting intimate sexual behaviour and/or nudity:

- A scene at approximately four minutes depicts Jason Moran and a woman briefly engaged in implied intimate sexual behaviour. Her breasts briefly visible. The length of the scene and framing and lighting of the shots are such that the behaviour is implied in a restrained way. This brief scene is justified by the context of the program to follow: the woman becomes a witness to the murder of Greg Workman and, because of her relationship with Moran, is persuaded not to testify against Gangitano.
- At 33 minutes a woman's breasts are briefly visible as she towels her hair after a shower. The woman and her sister are surprised by the sudden appearance of Carl Williams, come to take them out of the witness protection program.
- At 67 minutes a woman's breasts are briefly visible as she lies beside Jason Moran in bed. The scene is implicitly post-coital but contains no depiction of sexual activity.

It is therefore considered that the depictions of sex and nudity contained in the program did not exceed the requirements of the guidelines for such material in M-classified programs.

Language

The program contains some use of the word 'fuck' and its variations, including for example:

- In a scene of heightened emotion at approximately nine minutes, after a character is shot.
- A scene at approximately 78 minutes, in which Jason Moran chastises Carl Williams for inadvertently informing police that Moran had been at the scene of the nightclub assault.

While the language is occasionally used somewhat aggressively, its use is predominantly colloquial and not very aggressive. It is justified in the context of a drama set in the criminal milieu and, in the context of the two-hour program, its use is not frequent. It is therefore considered that the language can be accommodated within the M classification.

Cumulative impact

As noted above, the classification guidelines specify particular elements of material that are to be considered when assessing the material's appropriate classification.

Consideration must be given to the overall frequency and intensity of the classifiable elements throughout the program, as well as in particular scenes. Cumulative intensity may be reduced by juxtaposing scenes of high impact with others with lower impact, including, for example, those that do not contain any classifiable elements, or contain elements that would be suitable at lower classification levels.

The program under assessment is part of a scripted drama series and the classifiable elements described above occur within the context of a drama concerning the gangland war in Melbourne. In this episode, scenes in which classifiable elements are prominent are interspersed with other scenes of a lesser intensity. The cumulative impact of the classifiable elements is mitigated by the program's serious treatment of the story line.

For the above reasons, the delegate is satisfied that the treatment of the classifiable elements – considered individually and in terms of their cumulative effect – has an impact that would make the material recommended for viewers aged 15 years of age or older, and the delegate is satisfied that the material was appropriately classified M.

Decision

The Australian Communications and Media Authority determines for the above reasons that in its screening of *Underbelly – Episode 1 (The Black Prince) and Episode 2 (The Sorcerer's Apprentice)* on 13 February 2008, Channel Nine South Australia Pty Ltd:

- did not breach Clause 2.4 (Classification of Other Material) of the Commercial Television Industry Code of Practice 2004.
- did not breach Clause 4.1 (M Classification – Violence) of Appendix 4 (Television Classification Guidelines) of the Commercial Television Industry Code of Practice 2004.
- did not breach Clause 4.2 (M Classification – Sex and Nudity) of Appendix 4 (Television Classification Guidelines) of the Commercial Television Industry Code of Practice 2004.
- did not breach Clause 5.3 (M Classification – Language) of Appendix 4 (Television Classification Guidelines) of the Commercial Television Industry Code of Practice 2004.

The Common Seal of the
Australian Communications and Media Authority
was affixed to this document in
the presence of:

Signature of Member

Signature of Member

Name

Dated August 2008

Name