



**Australian Government**

**Australian Communications  
and Media Authority**

## Investigation Report No. 2018

<b>File no.</b>	ACMA2008/1259
<b>Licensee</b>	Channel Nine South Australia Pty Ltd
<b>Station</b>	NWS
<b>Type of service</b>	Commercial Broadcasting Service (Television)
<b>Name of program</b>	<i>Underbelly – Episode 3 (I Still Pray)</i>
<b>Date/s of broadcast</b>	20 February 2008
<b>Relevant legislation/code</b>	<i>Broadcasting Services Act 1992</i> , section 148 Commercial Television Industry Code of Practice 2004: <ul style="list-style-type: none"><li>• Clause 2.4 (Classification of Other Material)</li><li>• Clause 4.1 (M Classification – Violence) of Appendix 4 (Television Classification Guidelines)</li><li>• Clause 4.2 (M Classification – Sex and Nudity) of Appendix 4 (Television Classification Guidelines)</li><li>• Clause 4.3 (M Classification – Language) of Appendix 4 (Television Classification Guidelines)</li><li>• Clause 4.4 (M Classification – Drugs) of Appendix 4 (Television Classification Guidelines)</li></ul>

### Investigation conclusion

The Australian Communications and Media Authority (ACMA) finds that the program *Underbelly – Episode 3 (I Still Pray)* broadcast by Channel Nine South Australia Pty Ltd on 20 February 2008 contained a depiction of intimate sexual behaviour in a scene at 42 minutes which was not implied or simulated in a restrained way. ACMA therefore finds the licensee did not correctly classify the program in accordance with clause 4.2 (M Classification – Sex and Nudity) of the Television Classification Guidelines (the Guidelines) at Appendix 4 to the Commercial Television Industry Code of Practice (the Code), and breached clause 2.4 of the Code in relation to this broadcast.

## The complaint

On 7 April 2008 the Australian Communications and Media Authority (ACMA) received a written complaint about an episode of *Underbelly* broadcast on 20 February 2008. The complainant alleged that the M-classified program contained offensive sexual material, promotion of intravenous drug use, 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 which dramatises the 10 year gangland war in Melbourne. The series focuses on the bloody rivalry between Carl Williams and the ‘Carlton Crew’ and the related investigations by the Victorian police.

This episode follows the story of Tracey Seymour, who testifies against her ex-husband, Sidney Martin, following his drug trade-related murder of two men. The episode also follows the developing relationship between Roberta Stevens and Carl Williams. Williams reveals he is using the pill press owned by brothers Jason and Mark Moran to manufacture his own drugs.

The 45 minute program broadcast over a 60 minute period was classified M and was preceded by a consumer advice warning which stated that the program contained: ‘Strong Sex Scenes, Strong Violence, Frequent Coarse Language, Drug Use’. 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.

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 and broadcast during an M time zone, the Code requires that it be classified in accordance with the M provisions 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.

**4.4 Drugs:** Intravenous use of illegal drugs may not be shown in detail. The program must not promote or encourage the use of illegal drugs.

## **Complainant's submissions**

In relation to the program's classification, the complainant expressed concern about depictions of violence considered to be 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', offensive sexual material and depictions of drug use.

## **Licensee's submissions**

Channel Nine South Australia Pty Ltd (a division of WIN Corporation), the licensee of NWS, submitted that it 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. The licensee and the Nine Network have both made submissions in relation to the broadcast of this program.

The licensee's submission of 6 May 2008 stated that:

- The program complied with the Television Industry Code of Practice.
- The series is based on real events and it is essential for the storyline to portray as honestly as possible the ongoing anti-social behaviour practised by the crime figures.
- Appropriate steps were taken to ensure that viewers were well informed of the program's content with detailed consumer advice warnings.

The Nine Network's submission of 6 May 2008 stated that:

- Acts of violence depicted fall within the M classification guidelines.
- The visual depiction of violent activities is restricted to key events important to the program context.
- The violence was often presented in a stylised manner which lowers its impact.
- Depictions of sexual activity are only implied in a restrained way. When intimate sexual activity is depicted, much of the action is obscured by the camera angles used.

- Regarding the scene of sexual activity at 42 minutes, the couple are not seen full length naked but only from the waist up. “It fulfils the old rule of thumb guideline that we can imagine that they still have the underwear on...”
- The use of coarse language by criminals and their associates is justified as it is a defining element of their behaviour.
- Coarse language encompasses a variety of language including threats of violence, intimidation, racial slurs and misogynistic comments. The consumer advice of ‘Frequent Coarse Language’ is a description of all the language used, not just the number and variations of the word fuck.
- The program does not feature intravenous drug use. The program’s storyline details how various criminals came to grief over drugs and did not promote or encourage drug use.

The licensee’s response to ACMA’s preliminary report stated that:

The Nine Network will take appropriate steps to ensure that the episodes will be amended to ensure compliance with the Commercial Television Industry Code of Practice should the episodes/series be repeated or new series scheduled in the future, subject to ACMA’s final Investigation Report.

The Nine Network’s response to ACMA’s preliminary report stated that:

Nine undertakes to make further edits to the Programs prior to any future broadcast during the M Classification period to take into account the Report’s findings. While Nine accepts the findings, Nine does wish to raise some objections to the reasoning adopted and believes some aspects of the Reports raise erroneous matters not relevant to a determination of compliance with the Code.

Nine maintains that the length of the scene is not relevant to a determination of the term ‘restrained’ as it applies to the classification of programs under Appendix 4... While ACMA refers to the duration, Nine notes the report focuses on only two limited visuals images as justification for the contravention of the Code

...

Nine notes that the two visuals identified by the ACMA as resulting in the breach contain a number of distracting factors which lessen the impact and contribute to the restrained nature of the sequence

...

Nine further notes that the Report finds the “shot at approximately 43 minutes depicts Carl holding Roberta’s right breast as he thrusts”. Nine notes that in this scene, Carl’s palm is flat covering her breast, his fingers are clearly seen splayed out, discreetly covering almost all of her breast and not holding the breast. Nine believes that as a result of this, through out the scene, there are no full breast or nipple visuals.

## Reasons for decision

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.

### ***Sex and nudity***

The program contains two scenes depicting sex and nudity. ACMA considers that the strongest depiction of intimate sexual behaviour in the program occurs in a scene at approximately 42 minutes in which the characters Carl Williams and Roberta Stevens are shown engaged in implied sexual intercourse. The depiction of intimate sexual behaviour is of 40 seconds duration and contains two shots which ACMA considers contain detail which cannot be characterised as restrained. Williams sits in a chair while Stevens sits astride him, kissing him as they bounce and thrust. While there is no genital detail depicted, buttock and breast nudity visible throughout the scene imply that both characters are naked. Although the Nine Network has argued on behalf of the licensee that the couple are seen only from the waist up, a brief wide shot at approximately 42:54 minutes, in which the camera zooms in and out, shows an almost full-length view of Stevens thrusting astride Williams. A shot at approximately 43 minutes depicts Williams holding Stevens' right breast as he thrusts – the top of his buttocks visible through the chair in which he sits.

ACMA does not accept the Nine Network's argument that the duration of a depiction is irrelevant to a judgement about whether or not that depiction is restrained. A judgement about whether or not a depiction is restrained requires a consideration of its impact. While the Television Classification Guidelines do not explicitly identify factors that are likely to determine the impact of classifiable elements, it is noted that the Classification Board's Guidelines for Classification of Films and Computer Games, which provide a comparable framework for the classification of material, offer guidance regarding the relationship between duration and impact, stating that, '*[i]mpact may be higher where a scene contains greater detail ... [or] is prolonged*' (emphasis in original). ACMA also considers that the longer certain material is depicted, the greater its likely impact on the viewer, and the less likely it is restrained.

Nor does ACMA accept that the camera angles lessened the impact of the sequence by distracting the viewer. While William's hand obscures nipple detail, the contact adds to the impact of the depiction of intimate sexual behaviour.

ACMA therefore considers that the duration of the depiction and level of visual detail are such that the intimate sexual behaviour is not implied or simulated in a restrained way and therefore the depiction cannot be accommodated within the M classification.

Having determined that the depiction was not restrained, ACMA has not considered whether the depiction was justified by the storyline or program context.

The program also includes a scene at approximately five minutes which depicts waist-up female nudity, as a woman lies beside a man in bed. The scene is presented as a flashback and it is implicitly post-coital but contains no depiction of sexual activity.

This depiction of nudity is brief and is justified by the context of the storyline concerning the relationship between the two characters. It is considered that this depiction of nudity does not exceed the M classification requirements.

### **Violence**

The program contains several scenes of violence, including:

- At approximately six minutes, the character Sidney Martin enters a car workshop and implicitly shoots a mechanic. A second man then enters from a back room and is implicitly shot in the chest. He falls backward from the force of the gunshot but no impact is visible.
- At approximately 20 minutes a flashback sequence depicts characters Alphonse Gangitano and Jason Moran in a nightclub brawl, implicitly repeatedly kicking a person who is obscured by a pool table, and Moran head-butting a female in the face. The point of impact of the blows is not depicted and both shots are very brief. These shots are intercut with photos of the victims' bloodied faces.
- At approximately 56 minutes a further flashback to the nightclub attack shows Moran implicitly kicking a man repeatedly. The following clip depicts the man being treated by ambulance officers. Each of the clips in this sequence are under one second in duration.

The depictions of violence are not frequent in the context of the overall 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. ACMA therefore considers that the impact of the violence is not high. The violence is depicted in the context of the storyline relating to rivalry between criminal gangs and it is not presented as desirable in its own right. Criminal behaviour is depicted with negative repercussions, including police investigations and/or personal turmoil.

It is therefore considered that these depictions do not exceed the M classification requirements for violence.

### **Language**

The code establishes 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 permit 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).

The program, which was preceded by the consumer advice of ‘Frequent Coarse Language’, contains 22 instances of the word ‘fuck’ and its derivatives, such as ‘fucking’, and two uses of the word ‘cocksucker’. These occur throughout the 45 minute program broadcast over a 60 minute period.

Such language is considered to be coarse language for the purpose of classifying television programs and is permissible in M-classified programs, but only within the constraints outlined above. While the use of coarse language in an M-classified program can be justified by context, the frequent use of coarse language is subject to the additional requirement that it may only be used in certain justifiable circumstances when it is *particularly* important to the story line or program context.

Twenty-four instances of coarse language within a 60 minute period is considered to be frequent use of coarse language. In considering whether this frequent use was *particularly* important to the story line or program context, it is noted that the program tells the true story of the gangland war in Melbourne. It is considered that the coarse language is particularly important to the realistic portrayal of the criminal characters and their associates as it is a defining element of their anti-social behaviour. The language is largely confined to scenes depicting the criminal characters, these are intercut with scenes of the police investigation which generally do not include coarse language, and this mitigates its overall impact.

The coarse language is used colloquially throughout the program. Occasionally the language is used emotionally or in anger, for example in a scene in which a motorcycle gang raid a home at approximately 35 minutes, however this is considered to fall short of being very aggressive and therefore does not breach the Code requirement that coarse language not be very aggressive.

It is therefore considered that the coarse language can be accommodated within the M classification.

### ***Drug Use***

The program contains two depictions of drug use:

- In a scene at 41 minutes, Carl Williams shows Roberta Stevens a small bag of white powder. She cuts the powder into lines on the sunroof of a car, then inhales a line of the powder through a rolled up banknote. Williams is then shown inhaling the powder. The scene is shot from below the sunroof.
- In the following scene, Williams shows Stevens the pill press and drug manufacturing lab owned by the Moran family which he is using to make his own ecstasy tablets. Stevens swallows a pill before kissing Williams.

The program also contains verbal and visual references to ‘E’, the pill press and other paraphernalia associated with drug manufacturing. The program depicts the use of illegal drugs but does not depict intravenous drug use.

While the drug use is depicted in some detail, it is not promoted or encouraged. Drug use within the program is justified by the storyline, which examines a war between gangs involved in the manufacture and distribution of illegal drugs.

It is therefore considered that these depictions do not exceed the M classification requirements for drug use.

***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.

In this case, the frequency and intensity of the classifiable elements throughout the program mean that, in accordance with classification principles, consideration should also be given to the cumulative intensity of the program as a whole.

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 storyline 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 mitigating their cumulative impact.

However, as stated above, the depiction of intimate sexual behaviour in the scene at 42 minutes exceeds the M classification requirement that the depiction be restrained and therefore ACMA considers that the program was incorrectly classified.

## Decision

The Australian Communications and Media Authority determines for the above reasons that Channel Nine South Australia Pty Ltd, licensee of NWS, in relation to the broadcast of *Underbelly – Episode 3 (I Still Pray)* on 20 February 2008:

- breached clause 4.2 (M Classification – Sex and Nudity) 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).

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

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Signature of Member

\_\_\_\_\_  
Signature of

\_\_\_\_\_  
Name

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Name

Dated 2 October 2008