



Australian Government

**Australian Communications
and Media Authority**

Investigation Report No. 2019

File no.	ACMA2008/1260
Licensee	Channel Nine South Australia Pty Ltd
Station	NWS
Type of service	Commercial Broadcasting Service (Television)
Name of program	<i>Underbelly – Episode 5: The Good, The Bad, The Ugly</i>
Date/s of broadcast	5 March 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)• Clause 4.4 (M Classification – Drugs) of Appendix 4 (Television Classification Guidelines)

Investigation conclusion

The delegate finds that the program *Underbelly – Episode 5: The Good, The Bad, The Ugly* broadcast by Channel Nine South Australia Pty Ltd on 5 March 2008 was correctly classified 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 (the Code) 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 an episode of *Underbelly* broadcast on 5 March 2008.

The complainant alleged that the M-classified program contained frequent and high-impact violence, offensive sexual material, and coarse language. In correspondence to ACMA the complainant also objected to the depiction of ‘illicit drug use’ 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.

This episode follows Mark Moran as he takes control of the family drug manufacturing and trafficking business while his brother Jason is in jail. It concludes with the murder of Mark by rival dealer, Carl Williams.

The program 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 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.

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 which they allege are of high impact and therefore excluded from the M and MA categories. The complainant also objected to the 'very frequent use of coarse language' which 'contributes to the normalisation of this type of aggressive language in the community' and offensive sexual material including 'a "discipline" fetish' involving 'violence in a sexual context'.

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.

WIN's submission of 2 May 2008 notes that:

- The program complied with the Commercial 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 notes 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.
- Some scenes of violence have been edited in order to be accommodated in the M classification.
- 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.
- The scene depicting Mark Moran and a woman engaged in foreplay does not constitute a discipline fetish.
- 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.

Reasons for the 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.

Violence

The program contains several scenes of violence:

- A scene at approximately eight minutes Richard Mladenich surprises Mark Moran in the street. Moran turns and implicitly punches Mladenich in the face four times. The punches are not shown to connect and Mladenich quickly recovers.
- At approximately 14 minutes a man wearing a balaclava and holding a shotgun breaks down the door to a room in which Richard Mladenich is implicitly injecting drugs and implicitly shoots Mladenich in the chest. Mladenich is shown to fall back in his chair but the point of bullet impact is not depicted.
- At approximately 44 minutes Carl Williams implicitly shoots Mark Moran in the chest with a shotgun, the blast knocking him backwards off his feet. The shooting occurs in slow motion and the point of impact is obscured by debris. Williams then implicitly shoots Moran, and a small entry wound is seen on Moran's forehead.
- At approximately 55 minutes a very brief flashback sequence repeats the shot of Moran knocked off his feet by the shotgun blast.

While depictions at eight minutes and 14 are somewhat realistic, their impact is mitigated by the lack of visual detail, and is not high. Depictions at 44 minutes and 55 minutes are highly stylised. The realistic depictions are infrequent in the context of the one hour program, justified by story lines dealing with conflict between the rival gangs, and not presented as desirable in its own right. It is therefore considered that these depictions do not exceed the M classification requirements for violence.

Sex and nudity

The program contains three scenes depicting implied intimate sexual behaviour:

- A scene at approximately five minutes depicts Mark Moran engaged in role-playing with a woman. The woman bends over Moran's knee and Moran pulls down her underwear exposing her buttocks. This is seen from the side and the nudity lacks detail. Moran smacks the woman once lightly on the buttocks. The background music immediately stops and the woman exclaims, 'Ow. Shit Mark, that hurt!' ruining the mood of their fantasy and therefore reducing the impact of the material.

- In a scene at 34 minutes Mark Moran is engaged in implied sexual intercourse with the same woman. There is no nudity as Moran's back obscures the woman almost entirely. After implied orgasm, the couple roll onto their side and Moran gives the woman a pair of earrings. He then gives her an implied smack on the buttocks below screen.
- A scene at 41 minutes depicts Detective Steve Owens and his partner implicitly engaging in intercourse in a shower. A head and shoulders shot shows them kissing passionately. A wide shot reveals that Owens is standing in the shower with the woman's legs wrapped around him. The couple move from side to side and up and down in a swaying motion. The couple are largely obscured by steam and the shower curtain. They are quickly interrupted by a phone call.

In each of the above scenes, the short duration and lack of detail are such that the intimate sexual behaviour is implied in a restrained way. Behaviour depicted in each of the scenes is justified by story lines relating to the relationships between the characters.

The program also contains a number of scenes depicting nudity, including:

- At three minutes buttock nudity is visible as Roberta and Carl Williams stand up in their jacuzzi to get more alcohol and food from a nearby ledge.
- At six minutes a woman's buttocks are visible as she lies beside Mark Moran in bed. The scene is implicitly post-coital but contains no depiction of sexual activity other than brief kissing. Moran's buttocks are also visible as he leaves the bed at the end of the scene.
- At 45 minutes buttock nudity is visible as Carl Williams showers following his murder of Mark Moran.

The depictions of nudity are brief, naturalistic and contain no genital nudity.

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

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 23 uses of the word 'fuck' and its derivatives, such as 'fucking', which occur throughout the program broadcast over a one-hour period.

The word 'fuck' and its derivatives are considered to be coarse language for the purpose of classifying television programs, and such language 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-three instances of the use of the word 'fuck' and its derivatives within a one-hour 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, however this is considered to fall short of being very aggressive and therefore does not breach the Code requirement that language not be very aggressive.

It is therefore considered that the coarse language does not exceed the requirements of the M classification.

Drug Use

The program contains a depiction of intravenous drug use in a scene at 14 minutes in which Richard Mladenich implicitly injects himself with a drug. The act of injecting the drug implicitly occurs off-screen and the scene is therefore considered to lack detail.

While the story lines include the manufacture and sale of illegal drugs, the focus of the program is rivalry between criminal groups and the efforts of law enforcement to curb their activities. The program therefore neither promotes nor encourages the use of illegal drugs.

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 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, moderating the cumulative impact of the material.

Decision

I, Andree Wright, Executive Manager, Codes, Content and Education Branch, being the appropriate delegated officer of the Australian Communications and Media Authority, determine for the above reasons that in its screening of *Underbelly* on 5 March 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 4.3 (M Classification – Language) of Appendix 4 (Television Classification Guidelines) of the Commercial Television Industry Code of Practice 2004.
- did not breach Clause 4.4 (M Classification – Drugs) of Appendix 4 (Television Classification Guidelines) of the Commercial Television Industry Code of Practice 2004.

Signed: -----

Andree Wright

Dated: September 2008