



Australian Government

**Australian Communications
and Media Authority**

Investigation Report No. 2020

File no.	ACMA2008/1261
Licensee	Channel Nine South Australia Pty Ltd
Station	NWS
Type of service	Commercial Broadcasting Service (Television)
Name of program	<i>Underbelly – Episode 6: Luv U 4 Eva</i>
Date/s of broadcast	12 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)

Investigation conclusion

The delegate finds that the program *Underbelly – Episode 6: Luv U 4 Eva* broadcast by Channel Nine South Australia Pty Ltd on 12 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 the episode of *Underbelly* broadcast on 12 March 2008.

The complainant alleged that the M-classified program contained frequent ‘sometimes high impact and bloody violence’, very frequent use of coarse language and gratuitously repeated scenes of female 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.

The episode follows Andrew ‘Benji’ Veniamin, who is hired by Lewis Moran to find and execute his son’s killer. During the episode, Veniamin’s allegiance shifts to the ‘Carlton Crew’s’ rival, Carl Williams. The episode includes the murder by Veniamin of his friend Dino Dibra.

The program was classified M and was preceded by a consumer advice warning which stated that the program contained: ‘Strong Violence, Frequent Coarse Language and 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 nudity.

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 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, the strongest examples of which are:

- A scene from an earlier episode showing the murder of Mark Moran is repeated at approximately four minutes, seven minutes and 38 minutes as flash-backs. Moran's body is shown at a medium distance to shudder with the impact of bullets as he falls backwards. However, the point of entry of the bullets is not shown and there is no blood detail. The scene is stylised by the use of slow motion and is dimly lit, which reduces detail.
- At approximately 10 minutes, Dino Dibra and Rocco are involved in a car accident. After an altercation about the collision Rocco implicitly shoots the other driver a number of times and he falls to the ground. Although blood is seen coming from the victim's mouth at the end of the sequence, the shot is very brief. The moving camera further obscures detail.
- Dibra's corpse is shown at approximately 41 minutes. A very brief close-up of his face shows a wound on his forehead and dried blood from the corner of his mouth.
- At approximately 58 minutes, Andrew 'Benji' Veniamin implicitly shoots Dibra in a slow-motion, flash-back sequence. Points of impact are not shown and the focus is on the characters' reactions rather than the acts of violence. Brief, dimly lit shots of Dibra's chest wounds lacks detail. The stylised presentation further mitigates the impact.
- The preview of the next episode, at approximately 60 minutes, includes a sequence in which Veniamin implicitly shoots a person. There is no blood detail and the impact of the sequence is significantly reduced by its very brief duration and juxtaposition with images of other events previewed.

While depictions at 10 minutes and 41 minutes are realistic, their impact is mitigated by the lack of visual detail, and is not high. Other depictions at four minutes, seven minutes, 38 minutes and 58 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 no depictions of intimate sexual behaviour, but several scenes depicting nudity:

- At approximately 50 seconds, in footage from an earlier episode, Dibra drops his towel to implicitly expose himself to a female police officer. He is facing away from the camera, revealing his buttocks.
- At approximately 41 minutes, a woman is shown in bed at a hotel waiting for Veniamin to return. Her breast is revealed as she moves the sheet. The shot is brief and the context is non-sexual. Veniamin later returns to the room removing his singlet. The woman pulls the covers back to reveal both of her breasts. She stands

and her buttocks, which are partly obscured by the bed, are seen from a distance. Some brief breast nudity is shown as she dances with Veniamin. The scene has sexual overtones but sexual activity is neither implied nor simulated. These softly lit scenes from the hotel room are intercut with scenes concerning Veniamin's murder of Dibra.

- At approximately 47 minutes, there is a brief shot of two topless dancers as Veniamin enters a club to speak with Lewis Moran.

The depictions of nudity are brief, without detail and justified by the context of the story lines concerning character relationships. It is therefore considered that these depictions do not exceed the M classification requirements for sex and nudity.

Language

The code establishes a scale 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 43 uses of the word 'fuck' and its derivatives, such as 'fucking', which occur throughout the 45 minute 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.

Forty-one 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.

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 – Episode 3 (Luv U 4 Eva)* on 12 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.

Signed: -----
Andree Wright

Dated: September 2008