



Australian Government
**Australian Communications
and Media Authority**

Report: Investigations No. 1557, 1558, 1559

File nos.	2005/1235, 2005/1236, 2005/1226
Licensees	Network Ten licensees: Network Ten (Adelaide) Pty Limited, Network Ten (Melbourne) Pty Limited, Network Ten (Perth) Pty Limited, Network Ten (Sydney) Pty Limited, Network Ten (Brisbane) Pty Limited
Stations	ADS, ATV, NEW, TEN, TVQ
Type of service	Commercial television broadcasting service
Name of program	<i>Big Brother Uncut</i> (3 episodes)
Dates of broadcast	30 May 2005, 6 June 2005, 13 June 2005
Relevant legislation/code	Commercial Television Industry Code of Practice 2004, clause 2.4, and clauses 5.2 and 5.3 of the Television Classification Guidelines (Appendix 4 to the code)

Investigation conclusions

The Australian Communications and Media Authority determines for the reasons below that the Network Ten licensees (Network Ten (Adelaide) Pty Limited, Network Ten (Melbourne) Pty Limited, Network Ten (Perth) Pty Limited, Network Ten (Sydney) Pty Limited, Network Ten (Brisbane) Pty Limited), in relation to the broadcast of *Big Brother Uncut* on 30 May 2005 and 13 June 2005, breached clause 2.4 of the Commercial Television Industry Code of Practice for the broadcast of material that was not classified in accordance with the Television Classification Guidelines.

The investigations

1. These investigations were initiated by the Australian Broadcasting Authority (ABA) under section 170 of the *Broadcasting Services Act 1992* on 23 June 2005.
2. The ABA's decision to investigate the three episodes of the program was made in response to considerable media and public comment about the nature of the program, including comment that the program was not likely to meet the classification criteria set out in the Commercial Television Industry Code of Practice 2004 (the code).
3. The three episodes of the program that had generated the most comment were those screened on 30 May 2005, 6 June 2005 and 13 June 2005. The ABA decided to investigate those three episodes of the program.
4. From 1 July 2005, the Australian Communications and Media Authority (ACMA) continued the investigation commenced by the ABA, in accordance with clause 11 of Schedule 4 to the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*.
5. On 24 June 2005 comments were sought from Network Ten Pty Ltd (Network Ten), on behalf of the licensees, on the program's compliance with clause 5.2 of Appendix 4 to the code. Appendix 4 is the Television Classification Guidelines, which licensees must apply to most material for broadcast: clause 2.4 of the code. The comments were supplied by Network Ten on 4 July 2005.
6. On 8 July 2005, further comments were sought on compliance with clause 5.3 of Television Classification Guidelines, Appendix 4. Network Ten supplied these additional comments on 18 July 2005.
7. Network Ten was also invited to make comments on ACMA's preliminary investigation finding. These comments were received on 26 August 2005.
8. In relation to the 30 May 2005 episode, ACMA subsequently received four unresolved complaints from persons who, in accordance with the complaints process set out at section 148 of the *Broadcasting Services Act*, had first made their complaints to the relevant licensee but had not been satisfied with that licensee's response. ACMA has advised these complainants that the matters are currently under investigation, and they will be notified of the results of the investigation.

The program

9. Network Ten has described the *Big Brother* series as follows¹:

¹ Network Ten's comments are taken from its 'Submission to Australian Communications and Media Authority Investigation into *Big Brother Uncut 2005*' of 4 July 2005, the 18 July 2005 submission and the 26 August 2005 response to ACMA's preliminary investigation finding.

Big Brother is a reality television program in which a group of participants (known as ‘housemates’) share a house for approximately three months. The housemates’ behaviour and interactions are captured by 24-hour video cameras. In keeping with the ‘reality’ nature of the program, the actions of the participants are unscripted, unrehearsed and unpredictable. The footage shows their natural reactions to life in the house, and provides a context in which everyday experiences of shared household living may be featured.

The housemates are competing for a cash prize. The winner of that prize is decided by the program’s viewers via a telephone/SMS voting system that eliminates one housemate each week until the last person in the house takes the prize.

10. *Big Brother* consisted of a suite of programs broadcast in various classification zones, using different portions of the footage available. It has completed its fifth series.
11. *Big Brother Uncut* is an MA classified program in the series, which screens on Mondays at 9.40 pm.
12. The broadcast of *Big Brother Uncut* was preceded by an information screen setting out the classification category and the key content factors that contributed to that classification category. In respect of the three episodes under consideration, Network Ten stated that each broadcast was preceded by consumer advice for sexual references, nudity, adult themes and frequent coarse language.
13. In relation to *Big Brother Uncut*, Network Ten stated:

The motivation behind *Big Brother Uncut* is to provide viewers with a complete and realistic picture of life in the *Big Brother* house, and the true characters of the housemates. This is important because some crucial aspects of life in the *Big Brother* house and personalities of the housemates are unsuitable to be aired in the PG programs. However, this behaviour is often an important part of the household environment, and critical to the audience’s understanding of particular housemates and relationships. Regular viewers understand that the housemates are adults, and as such adult behaviour occurs within the house over a period of time.
14. *Big Brother Uncut* therefore presented a range of behaviours that could not be presented during the more restrictive classification zones. The three episodes of *Big Brother Uncut* that are the subject of this investigation contain extensive sexual references, implied or simulated sexual behaviour, full frontal nudity, and coarse language. While each program also contains some other components, the sexual elements, nudity and some coarse language are the strongest elements of each program under consideration.
15. The *Big Brother Uncut* component of the *Big Brother* series appears to have been contrived to be of high intensity. In its 26 September 2005 letter to

ACMA, Ten stated that single housemates were selected to add to the sexual tension and drama of the house. This series of *Big Brother* programs was promoted as being more controversial than any of the previous series. The *Big Brother Uncut* program brought together the high intensity material generated as a result of the interactions between this group of participants.

16. Network Ten stated that *Big Brother Uncut* was targeted at the 16–39 demographic, with 88 per cent of the audience aged 18 years and over, and 92.4 per cent of the audience made up of people aged 15 and over.

Assessment

17. In assessing compliance with the code, ACMA considered recordings of the episodes broadcast, and submissions on their compliance with the code provisions, supplied by Network Ten on 4 July 2005, 18 July 2005, 26 August 2005 and 26 September 2005.

Relevant code provisions

18. The relevant code provisions are contained in the industry code of practice, Commercial Television Industry Code of Practice July 2004, developed under section 123 of the Broadcasting Services Act by Free TV Australia, the industry group which represents commercial television broadcasting licensees.
19. The code contains the following provisions:
 - 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.
20. At Appendix 4, the relevant MA classification provisions are:

The Mature Audience (MA) Classification

5. Material classified MA is suitable for viewing only by persons aged 15 years or over because of the intensity and/or frequency of sexual depictions, or coarse language, adult themes or drug use.
...
- 5.2 **Sex and nudity:** Visual depiction of intimate sexual behaviour (which may only be discreetly implied or discreetly simulated) or of nudity only where relevant to the story line or program context. However, a program or program segment will not be acceptable where the subject matter serves largely or wholly as a vehicle for gratuitous, exploitative or demeaning portrayal of sexual behaviour

or nudity. Exploitative or non-consenting sexual relations must not be depicted as desirable.

5.3 **Language:** The use of very coarse language must be appropriate to the story line or program context and not overly frequent or impactful.

...

5.6 **Adult themes:** The treatment of strong themes should be justified by the story line or program context.

21. Apart from material with violent content, to which the Adult Violence (AV 15+) classification applies, MA sets the upper limit in terms of the strength of material that is able to be broadcast on commercial free-to-air television.

22. The code also sets out 'classification zones', which prescribe the times at which material with a particular classification can be screened. For MA classified material, the code states:

Mature audience (MA) classification zones

2.11 The MA classification zone is all days between 9.00 pm and 5.00 am. In MA zones, any material which qualifies for a television classification may be broadcast, except that material classified AV may only be broadcast after 9.30pm.

23. Apart from AV 15+, the MA classification is the most limited in terms of permissible broadcast hours, in recognition of the fact that MA material is the strongest permitted on commercial free-to-air television. This time restriction for MA classified material is based on the requirement at section 123(3A)(d) of the Broadcasting Services Act, which states:

123(3A) In developing codes of practice ... industry groups ... must ensure that:

...

(d) films classified as 'MA' may be broadcast only between the hours of 9 pm on a day and 5 am on the following day.

ACMA's consideration

24. Clause 5 of the Television Classification Guidelines (Appendix 4 to the code) sets out the overarching requirement that, in order to meet the MA classification, the program must be suitable for viewing by persons aged 15 years and over. The individual classification elements listed in clause 5 provide specific guidance in relation to this overarching test.

25. In assessing whether material meets that test, the provision states that key considerations are the intensity and/or frequency of the classifiable elements (such as the sexual depictions and coarse language).

26. Intensity, as with frequency, may be a cumulative test, assessed by considering the program as a whole as well as on a scene-by-scene basis. In other words, consideration must be given to the overall frequency and intensity of the classifiable elements throughout the program, as well as in particular scenes.
27. ACMA has therefore approached its assessment of the three episodes of *Big Brother Uncut* by considering both:
 - a. the program as a whole, which is a high intensity and high frequency treatment of sex, coarse language and adult themes and
 - b. the individual scenes which comprise the program.
28. While Network Ten has commented in its submission that the housemates were adults and engaged in adult behaviours, the issue in assessing the program's compliance with the code is whether the material is suitable for viewing by persons aged **15 years and over**.

Issues

29. Each episode of *Big Brother Uncut* under investigation was classified MA by the licensees. ACMA must consider each episode in terms of its compliance with the requirements for this classification category.
30. As noted above, the MA category, while comprising the strongest material that is permitted for broadcast on commercial free-to-air television (apart from that with violent content), cannot accommodate material that would be unsuitable for persons aged 15. ACMA has therefore been required to consider not whether the material is suitable for the adult audience to which it is said to be largely targeted, but whether it is suitable for persons aged 15, 16 and 17 years.
31. The code does not impose any special conditions on programs that target younger age groups, other than that they remain suitable for persons aged 15. It is likely, however, that the community view would be in favour of careful treatment for programs that are likely to have strong appeal to older teenagers.
32. ACMA therefore considers that the fact that *Big Brother Uncut* specifically targets the younger end of the adult demographic, if anything, sharpens the focus on the selection of material for broadcast, to ensure the limits imposed by the MA classification are not exceeded. The need for responsible programming at this level has been argued by licensees themselves, in the context of negotiations in the development and reviews of the code. This is in recognition of the fact that free-to-air television is readily available in the home, with time zones and consumer advice providing the only regulated barriers to access.
33. A number of matters are relevant to a consideration of whether the program complies with the MA classification provisions. These are the program's

treatment of intimate sexual behaviour, sexual references, coarse language and nudity.

Sex and nudity

34. The first relevant classification criterion is that for sex and nudity. These elements strongly shape the character and tone of the program.
35. The frequency and intensity of these elements mean the *Big Brother Uncut* program is located firmly at the mid to upper end of the MA classification, even before a consideration of any borderline elements.
36. They also mean the program is stronger than would be expected in most drama programs that have been classified MA for sexual matters. In the latter case, the classification will generally be assigned for a discrete number of scenes depicting sexual matters. In the case of *Big Brother Uncut*, the sexual content is the predominant aspect of the program.
37. As examples of the sexual content, each episode of the program under consideration contains some scenes depicting 'intimate sexual behaviour'. The 30 May 2005 episode contains a scene depicting a group of female contestants simulating masturbation with a vibrating device, and another scene depicting a male and a female contestant kissing and engaging in sexual conduct in the sauna. The 6 June 2005 episode contains a scene depicting a group of females in a spa, using a shower hose to simulate masturbation, while also talking about masturbation. The 13 June 2005 episode contains a scene in which two participants, Michelle and Glenn, kiss and embrace in the bath. While all of these scenes are found to be visually sufficiently discreet to meet the MA classification, the fact that they depict sexual conduct between or involving housemates means they do have a significant degree of intensity.
38. There are two threshold issues relating to the 'sex and nudity' criterion to be addressed before moving to a consideration of particular scenes within the three episodes of the program.

Relevant to the story line or program context

39. Clause 5.2 of Appendix 4 to the code requires that visual depictions of intimate sexual behaviour or of nudity must be 'relevant to the story line or program context'.
40. Network Ten has submitted² that the depictions of sex and nudity are relevant to the program context:

The motivation behind *Big Brother Uncut* is to provide viewers with a complete and realistic picture of life in the *Big Brother* house, and the true characters of the housemates. This is important because some

² Network Ten submission 4 July, pp. 5 and 6.

crucial aspects of life in the *Big Brother* house and personalities of the housemates are unsuitable to be aired in the PG programs.

Sexual behaviour and nudity do feature in *Big Brother Uncut* as these are a genuine part of life in the *Big Brother* house. One of the unique features of *Big Brother* is that housemates cannot escape the camera's gaze, even while performing normally private activities such as showering. The way housemates react to this complete lack of privacy is an integral part of the show.

ACMA view

41. Within the reality format, it is legitimate to have a program that explores the interactions that occur amongst a group of people forced to live for a certain period of time in a contrived situation. It is also legitimate to have a program format that concentrates on the more 'adult' behaviour of the participants, as depictions of such behaviour may be relevant to forming a view of the participants.
42. Applying a threshold test, it can be considered that the depictions of sexual behaviour and nudity in *Big Brother Uncut* may be relevant to a story line or program context. This consideration, however, will be subject to the discussion under 'Gratuitous, exploitative or demeaning portrayal' below.

Gratuitous, exploitative or demeaning portrayal

43. The other general statement in clause 5.2 is that 'a program or program segment will not be acceptable where the subject matter serves largely or wholly as a vehicle for gratuitous, exploitative or demeaning portrayal[s] of sexual behaviour or nudity'.
44. *Macquarie Dictionary* definitions for these terms are as follows:
 - Gratuitous** – ... 2. being without reason, cause or justification.
 - Exploit** – 1. to turn to practical account; utilise for profit, especially natural resources.
2 – to use selfishly.
 - Demeaning** – to lower in dignity or standing, debase.
45. Network Ten submitted the following:

The subject matter of *Big Brother Uncut* does not serve as a vehicle for unacceptable portrayals of sexual behaviour and nudity ...

Each episode in the *Big Brother* programs continues the story of the housemates' experiences and relationships. There is no difference in the underlying subject matter of *Big Brother Uncut* and other *Big Brother* programs. The only difference is that as an MA 15+ program *Big Brother Uncut* can include behaviour, discussions and experiences that are not allowed under the PG classification.

46. Network Ten cited *Macquarie Dictionary* and the Office of Film and Literature Classification's *Guidelines for the Classification of Films and Computer Games* (OFLC Guidelines) definitions in relation to the code terms 'gratuitous', 'exploitative' and 'demeaning'.
47. The OFLC Guidelines' List of Terms states:
- DemEAN:** A depiction or description, directly or indirectly sexual in nature, which debases or appears to debase the person or character depicted.
- Exploitative:** Appearing to purposefully debase or abuse for the enjoyment of others, and lacking moral, artistic or other values.

ACMA view

48. While this does not form the basis for ACMA's conclusions, the nature of the content means an argument could be mounted that the *Big Brother Uncut* program as a whole 'serves largely or wholly as a vehicle for gratuitous, exploitative or demeaning portrayal[s] of sexual behaviour or nudity'.
49. In assessing the overall character and intensity of the program, the elements that stay most strongly with the viewer are the pervasive references to sexual activity, sexual behaviour, and nudity. Where the program does highlight relationships between housemates (as Network Ten contends), these relationships often contain and/or focus on a sexual component. Similarly, the experiences recounted by the housemates (as selected for broadcast in *Big Brother Uncut*) are most frequently their sexual experiences, preferences or fantasies.
50. In deciding whether this content 'serves largely or wholly as a vehicle for gratuitous ... portrayal[s] of sexual behaviour or nudity', consideration should be given as to whether there is another purpose for the subject matter that contextualises this type of content. Network Ten has argued that it is important that the program be able to show high level content, in order to give viewers a 'complete and realistic' picture of life in the *Big Brother* house.
51. As stated above, ACMA accepts that the episodes of *Big Brother Uncut* under consideration do present certain aspects of participants' characters and relationships, and this may enable the viewer to form an opinion of the participants. This provides some justification for the subject matter, so that the portrayals of sexual behaviour and nudity in the program are not wholly gratuitous in nature.
52. There are, however, necessary limits to the application of this argument. The filming conditions in the *Big Brother* house (24-hour video cameras recording much of the participants' activity) are such that a large volume of footage is generated and on offer for inclusion in the program. It is within the broadcaster's discretion to exercise judgement about the selection of material for broadcast. From this large volume of potential content, material has been chosen that focuses largely (though not exclusively) on sexual matters or nudity. Further, as noted above, participants in the series appear to have been

selected at least partly on the basis that they would be likely to generate controversial material (including material with sexual content) for broadcast.

53. Nor is it possible to look beyond the context of *Big Brother Uncut* to the entire suite of *Big Brother* programs (as is suggested by Network Ten) in seeking to establish that there is a story line or program context that legitimises certain portrayals of sexual behaviour and nudity. The language of the code makes reference to a particular program, not to a suite of programs, in relation to this criterion. It cannot be assumed that viewers of a particular program will be familiar with other components within the *Big Brother* suite of programs, and will be able to contextualise the behaviour of participants in the ways suggested by Network Ten. This means that the onus is on the licensee to ensure that this program, in its own right, addresses this element of the code.

Network Ten's response to ACMA's preliminary finding

54. In its response to ACMA's preliminary finding, Network Ten stated:

The purpose of *Big Brother Uncut* is to show a complete picture of the housemates and their experiences in the *Big Brother* house by broadcasting material that we cannot show in programs with a lower classification. The producers do not deliberately select material that is high in impact. They select material that is colourful, funny and entertaining, and that shows the housemates as they really are ...

55. ACMA affirms its view that the program as a whole does not fail against this element of the code provision, but that the material throughout the program has a strongly sexual flavour that puts it at the upper end of the MA provision.
56. The test relating to 'gratuitous, exploitative or demeaning portrayal' applies both to the program as a whole, and to segments within a program. When this is considered to be relevant, particular segments of the program are discussed against this test below.

Nudity

57. Each episode of the program under consideration contains several depictions of full frontal male and female nudity. The frequency of the nudity is such that this element alone puts the program firmly at the mid to upper end of the MA classification.
58. The code allows depictions of nudity at the MA level (if, as discussed above, they are relevant to the story line or program context). This is subject to the requirement that 'a program *or program segment* will not be acceptable where the subject matter serves largely or wholly as a vehicle for gratuitous, exploitative or demeaning portrayal[s] of ... nudity'. ACMA must consider not only the question of whether the program as a whole contains 'gratuitous, exploitative or demeaning' portrayals, but whether the subject matter of

particular program segments contains such portrayals. The meanings for these terms have been discussed above.

59. In considering whether a particular depiction of nudity meets or exceeds the MA classification criteria, the context for, duration of, and degree of nudity are relevant.
60. Most depictions of full frontal nudity in the episodes under consideration occur in naturalistic settings, such as when participants are using the communal shower. Full frontal nudity is generally depicted in long shot, genitals are not unduly highlighted or the focal point of the frame, and, whilst the commentary accompanying some of the nudity adds a sexualised or voyeuristic tone, nudity is not in itself associated with sexual activity.
61. Scenes of nudity in these episodes range from those very brief in duration, to those that contain relatively extended portrayals. For example, the 30 May episode contains a five minute scene depicting male participants in the shower, intercut with discussions between females about penis size. The duration of this scene means it is close to the limit in terms of what is permissible in the MA classification zone. While an argument can be made that a short scene depicting participants showering naked may be justified by the program context (revealing, perhaps, their level of comfort with the activity or a particular side to their character), a longer scene of the same nature may simply present as titillatory in nature.
62. A scene that clearly does not meet the requirements at clause 5.2 of the Television Classification Guidelines is discussed below.

30 May 2005 episode – massage scene

63. This scene depicts a male (Michael) standing behind a female (Gianna) who is seated at a table with a group of men. The male is massaging the female's shoulders, while, unknown to her, he has his penis deliberately exposed. At one point, the male's penis appears to rub against the hair of the female. The male appears to intend the action as a practical joke, and the men at the table respond with laughter. The female discovers what has happened when the massage is over, and reacts with considerable surprise to the incident.

Network Ten's submission

64. Network Ten notes that, in deciding what constitutes an exploitative portrayal of nudity, a distinction needs to be drawn between 'the behaviour of the contestants and the program's portrayal of that behaviour'³, and that:

... the portrayal of the incident in the program did not purposefully 'debase' Gianna for the enjoyment of others. The portrayal does not condone the behaviour, nor does it expose Gianna to ridicule. The

³ Network Ten submission 4 July, p.8.

behaviour occurred in a context in which the housemates had been playing practical jokes on each other all week. The episode shows the behaviour in an objective fashion, including Gianna's reaction before and after the practical joke occurred. Gianna has since confirmed that she was surprised but not offended or upset by the incident. Viewers drew their own interpretations from the incident. It contributed to a substantial vote against Michael, who was evicted later that week.

ACMA view

65. In considering whether this particular program segment presents a gratuitous, exploitative or demeaning portrayal of nudity, the purpose and context for the portrayal and the nature of the portrayal are all relevant considerations.
66. ACMA considers that the depiction serves to demean the female. As referred to above, the OFLC guidelines include for 'demean', 'a depiction, directly or indirectly sexual in nature, which debases or appears to debase the person or the character depicted'. This depiction was indirectly sexual in nature, in that the male had deliberately exposed his penis, and feigned rubbing it in the female's hair. A large part of the intensity of the scene derived from the fact that the female was oblivious to his actions, while others at the table were aware of them, and laughing.
67. The *Macquarie Dictionary* relevantly defines 'debase' as, 'lower in rank or dignity.' In looking at whether the action 'appears to debase' the female, ACMA considers that a reasonable person would be of the view that a practical joke involving a male rubbing his genitals in the hair of an unsuspecting female would generally be considered to lower the dignity of the female against whom the joke is directed.
68. Despite the female's reported subsequent statements that she was not offended by the incident, this was not obvious to the viewer at the time of the broadcast. The portrayal of nudity appeared to lower her dignity, and thereby demean her.
69. ACMA has also considered whether the segment is gratuitous. Network Ten has argued that the scene was not gratuitous, but was necessary to illustrate a particular side of Michael's character, and that the voting public's reaction justified the inclusion of the scene in the program.
70. This argument (that inclusion of any particular scene is justified by the need to illustrate an aspect of a participant's character) could be advanced in support of screening virtually any of the behaviour that occurs while contestants are in the house. There must be limits to its application, or it would become possible for any program maker to contrive a reason for the use of material that would otherwise not meet the relevant code provisions. In this case, this argument alone is not sufficient to give cause or justification to the presentation. Within this particular episode, there is no other context for the scene that would give reason to or justify it.

71. ACMA considers that the lack of a naturalistic context for the nudity, in conjunction with the high intensity depiction of nudity (the male's penis and the female's shoulders are the focal point of the depiction) and the demeaning element to the scene referred to above means there is no sufficient reason or cause for the portrayal in the scene.
72. ACMA notes that this scene generated negative publicity at the time of broadcast and that Network Ten issued a press release apologising for any offence that may have been caused by the attitude of some Big Brother housemates towards women.⁴ In addition, of the four complainants that have referred this episode of the program to ACMA for investigation under section 148 of the Broadcasting Services Act, three have specifically mentioned this scene as very offensive and/or demeaning.
73. This scene is considered not to meet the MA classification provision at clause 5.2 of the Television Classification Guidelines .

Network Ten's response to ACMA's preliminary finding

74. Network Ten commented:

We do not agree with ACMA's finding that the nudity in this scene was gratuitous. ACMA recognises elsewhere in this report that the definition of gratuitous is 'without reason cause or justification'. In this scene there was clearly a reason for the nudity because it was the nub of the practical joke that Michael was playing on Gianna ...

We are also concerned at the idea that any nudity that is not part of an 'everyday' activity is not naturalistic and could therefore be gratuitous.

75. ACMA notes that there are a number of other scenes in the episodes under consideration that contain nudity that would not generally be considered 'naturalistic' (i.e. appearing in an everyday context), such as a scene in which two females run naked around the garden as a dare. The consideration of whether there is 'reason, cause or justification' for any particular portrayal will relate to other considerations in addition to whether the nudity is naturalistic, such as the tone of and context for the scene. That is, it is not simply the nudity, but the nature of the portrayal, that influences any consideration.

Sexual references

76. Sexual references are pervasive throughout the episodes of the program under investigation, and contribute significantly to each program's overall intensity. Sexual references are made in discussions between housemates about matters such as sexual preferences, sexual fantasies, and body parts including optimum penis and breast size.

⁴ Network Ten press release, 22 June 2005.

Network Ten's submission

77. Network Ten has submitted the following with respect to the sexual references:⁵

Big Brother Uncut does include conversations that contain candid, and sometimes detailed, references to sexual behaviour. However, these conversations are carefully classified before being included in the program to ensure that they are not so explicit as to be prohibited by the code. To the extent that conversations depicted on *Uncut* contain references to actual body parts, the references are brief and the context of the conversations is non-sexual. Conversations are not generally accompanied by any visual references or depictions of sexual behaviour that would heighten their impact.

The conversations shown usually have a group of housemates sitting together sharing information about their sexual experiences, preferences and anxieties. The tone of the conversations is friendly, frank, non-sexual, and often humorous, limiting the intensity of the depiction ...

ACMA view

78. A number of scenes raised concerns due to the frequency or intensity of the sexual references they contained. ACMA considers that while most individual scenes may fall within the requirements of the MA classification at clause 5 of the Television Classification Guidelines, the code itself does not give explicit guidance in regard to sexual references in MA classified material.
79. There is guidance at the lower, M, classification level, where it is stated that sexual references 'should not be detailed'. Given the classification hierarchy, which is based on the principle that more intense material can be included at higher classification levels, this appears to allow for the inclusion of detailed sexual references in MA classified material. The lack of any specific provision for sexual references at MA, however, means the boundaries for this material are poorly defined.
80. Despite there being no specific mention of sexual references in the classification guidelines, the MA requirements regarding language, discussed below, do apply to sexual references that also contain a coarse or offensive element, or that deal in an uncouth manner with a sensitive subject. This means that the classification guidelines in the code do specifically address certain types of sexual references at the MA classification level.
81. Furthermore, the lack of any specific mention of sexual references in the MA category does not mean that there are no limits on the strength of references permitted at the MA classification level. Sexual references, in common with

⁵ Network Ten submission 4 July, p. 13.

all material that can be accommodated within the MA classification, must remain suitable for persons aged 15 years.

82. In considering the nature of the sexual references in the three episodes of *Big Brother Uncut* under investigation, it is noted that the sexual references are generally made in a conversational manner rather than in a sexual context. References tend to occur in the context of candid discussion between housemates about their sexual preferences and fantasies. Whilst some of the references do contain detail, as noted above, this is permitted at the MA classification level.
83. However, the pervasive nature of the references, the extent of some of the sexually explicit discussions, and the nature of the terminology used, add considerably to the impact of the references and mean that material in the program approaches the upper limits of what is permissible in the MA classification category.
84. One specific reference is discussed under 'language' below.

Language

85. At clause 5.3 of Television Classification Guidelines, the MA classification criterion for language states, 'The use of very coarse language must be appropriate to the story line or program context, and not overly frequent or impactful'.

Network Ten's submission⁶:

86. Network Ten states that:

Legitimate slang expressions used in an everyday conversation about sexual activities are not 'very coarse' in the same way as conventional expletives, and their use should not be banned under clause 5.3 of the code.

In defining coarse language it is also important to distinguish between conventional profanity, such as 'fuck', 'shit' and 'cunt', and informal vulgarity, like the slang terms 'stiffie' or 'minge' ...

While slang terms may sound unpleasant, and remain unsuitable for earlier classification time slots, they are not 'very coarse' language in the same way as conventional and explicit expletives. Given that explicit expletives such as 'fuck' and 'cunt' are allowed on commercial free-to-air television at the MA15+ classification, it would be anomalous for ACMA to determine that obscure slang terms should be banned ...

The slang terms used in the Big Brother house are metaphorical colloquialisms that describe body parts or sexual behaviour in an

⁶ References from 18 July 2005 submission.

indirect manner.

If ACMA finds that these slang words are *prima facie* both ‘very coarse’ and too ‘impactful’ for commercial free-to-air television, it will have the consequence of banning conversations about sexual behaviour.

ACMA view

87. Generally, coarse language as a classifiable element is understood to mean abusive language, or language that would cause offence to some or many in the community. While the ‘conventional profanities’ identified by Network Ten clearly fall into the category of coarse language, this list is by no means exhaustive. In addition, terms that fall under the banner of coarse language may change over time, and the level of offence associated with particular terms will be context dependent (so that a particular string of words may be more offensive, and have more impact, than similar terminology used in different contexts). New combinations of words may also carry more impact.
88. This ‘language’ criterion is relevant to several of the sexual references made by participants. In certain cases, the terminology used goes beyond being merely sexually descriptive, and becomes ‘very coarse language’. That is, in addition to its sexual content, it also contains a particular component that makes it more generally offensive in nature. The compounding of several conventional profanities and their context can also turn coarse language into very coarse language that is unlikely to meet general community standards for viewing by 15 year olds.
89. In addition, some language may invoke other classification criteria, or the general test for suitability for MA, as well as the particular test for ‘language’. For example, it may be that if coarse language has a sexual component, there is a cumulative intensity that puts it beyond the MA threshold. Whether any particular combination of references meets the test for suitability for MA will vary from case to case.
90. While there are several scenes with high impact coarse language, ACMA has identified a particular example where sexual references are used very coarsely without appropriate story line or program context. This language is overly impactful, to the point of being confronting. This scene clearly does not comply with the classification provision at clause 5.3 of Television Classification Guidelines.

13 June 2005 episode

91. This episode contains a series of scenes in which a group of males compose a song about a male who likes to ‘leave a skid mark on the chest’ of females he has had sexual relations with. The males ad lib the song, starting with the above refrain, and repeating this several times as they develop the song. The song contains detailed and explicit reference to sexual activity (for example,

‘I want to fuck you between the breasts, ‘On the way back to my place, shove my cock into your face’), and apparent sexual fetish (‘leave a skid mark’, ‘shitting is my vice’), in conjunction with the refrain repeating the ‘skid mark’ reference.

ACMA view

92. The references to sexual activity in this song would generally be understood to comprise ‘very coarse language’. The references are to sexual activity, or activity undertaken in association with sexual conduct (such as defecation), that many people would consider to be degrading in nature. While many of the sexual references in the program are likely to cause offence to some parts of the community, it can be argued that they are merely descriptive in nature, and reflect the experience or interests of the older teenage and adult audience that the program is targeting. The references in this song, however, go beyond this, and are likely to cause offence to a sizeable part of the community, who would not consider this to be suitable for 15 year olds.
93. In assessing whether the very coarse language meets the test at the MA classification level, the impact of the language is the most relevant consideration. Whilst the song does not purport to relate to an actual experience in the *Big Brother* house, and it is presumably intended by the male housemates who composed it to be humorous in nature, this does not mitigate the impact that is generated by the confronting or degrading nature of the terminology used in the song. The fact that the males find the song amusing could even be said to add to the potential offence generated by the sentiments expressed in the song. The song appears to be repeated in a number of different settings, and this also adds to its impact.
94. Because of the level of impact, ACMA’s view is that this use of very coarse language is in breach of the code. While the language may be such that adults can place the references in an objective context, and justify its use, material classified MA must be suitable also for 15 year olds. ACMA considers that a significant proportion of the population would consider that this terminology has an impact that renders it not suitable for persons in this age group.

Network Ten’s response to ACMA’s preliminary finding

95. Network Ten commented:

Ten has carefully considered ACMA’s finding that a song included in the 13 June episode of *Big Brother Uncut* breached the MA 15+ coarse language provisions of the code. While we accept that the song was in bad taste and that the content could be considered offensive, we do not agree that the language was ‘very coarse’. We are concerned that the finding sets an unusual and ambiguous precedent for breaches under the language element of the code ...

Contrary to the view expressed in the report, the song does not contain language that would generally be understood to be ‘very coarse’. In fact, much of the language of the song is not particularly offensive when viewed objectively ...

To the extent that the song was likely to cause offence to a ‘sizable part of the community’, it was because *the references* in the song can be construed as fetishistic and potentially degrading for those aged fifteen and above. If ACMA considers that these references were unsuitable for broadcast, it must make the finding under clause 5.2 of the code or on the grounds that the song was not suitable for people aged fifteen years.

96. Whilst the finding could be made under clause 5.2, clause 5.3 or on the general grounds of unsuitability for 15 year old viewers, ACMA considers that the particular combination of language used in the song comprises ‘very coarse language’. The test for such language will be subject to some degree of variability, depending on the combination of words and context for the language used.
97. Individual references in this song would probably not in isolation breach the MA threshold for language. In the circumstances of this incident, it is the fetishistic and degrading nature of the sexual content (invoking the sex and nudity provision at clause 5.2), in conjunction with the specific words used and the clustered nature of the references (invoking the coarse language provision), mean the scene fails to meet the overarching test of suitability for 15 year old viewers.

Findings

98. The three episodes of *Big Brother Uncut* under consideration are characterised by a high intensity and high frequency treatment of the classifiable elements. Given this, particular care must be taken by licensees to ensure that material selected for broadcast not exceed the MA classification category, and remain suitable for viewing by persons aged 15.
99. ACMA is of the view that licensees have not taken sufficient care in the selection of material for broadcast. Two clear instances where the licensees are in breach of clause 2.4 of the Commercial Television Industry Code of Practice (for broadcast of material that is not classified according to the Television Classification Guidelines) are:
- 30 May 2005 episode – ‘massage scene’ contains gratuitous and demeaning portrayal of nudity, that does not comply with clause 5.2 of the Television Classification Guidelines at Appendix 4 to the code.
 - 13 June 2005 episode – song about apparent sexual fetish comprises very coarse language that is overly impactful and does not comply with clause 5.3 of the Television Classification Guidelines at Appendix 4 to the code.

Decision

The Australian Communications and Media Authority determines for the above reasons that the Network Ten licensees (Network Ten (Adelaide) Pty Limited, Network Ten (Melbourne) Pty Limited, Network Ten (Perth) Pty Limited, Network Ten (Sydney) Pty Limited, Network Ten (Brisbane) Pty Limited), in relation to the broadcast of *Big Brother Uncut* on 30 May 2005 and 13 June 2005, breached clause 2.4 of the Commercial Television Industry Code of Practice for the broadcast of material that was not classified in accordance with the Television Classification Guidelines.

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 (please print)

Name (please print)

Dated this _____ day of _____ 2005