

Investigation report no. BI-605

Summary	
Broadcaster [Service]	Special Broadcasting Service [SBS]
Finding	Breach of code 4.6 [Classification]
Relevant codes	SBS Codes of Practice 2014 (revised July 2019)
Date finalised	1 March 2022
Program [description]	<i>Hitler's Last Year</i> (Episode 2) [documentary]
Date of broadcast	20 March 2021
Type of service	National—television
Attachments	A – complaint to the SBS B – extracts from the SBS's response to the complainant and submission to the ACMA C – relevant Codes provisions and the ACMA's approach to assessing content

Background

In May 2021, the Australian Communications and Media Authority (the **ACMA**) commenced an investigation under the *Broadcasting Services Act 1992* (the **BSA**) into the program titled *Hitler's Last Year* (Episode 2) (the **Program**).

The Program was broadcast by the Special Broadcasting Service (**SBS**) (the broadcaster) on 20 March 2021 at 5.35 pm. It is a historical documentary series, described on the SBS website as follows:

From the D-Day landings on the 6 June 1944, to the surrender of the Third Reich on 8 May 1945, it took 353 days to bring down the Nazi regime. This series looks at the eleven months that preceded Hitler's defeat and unveils entire chapters of the war that are largely unknown.

The Program was classified PG and the first scene contained a caption in the top left-corner of the frame that stated 'this Program includes content that may distress', followed by a display of the PG symbol and the caption 'Parental Guidance Recommended'. Its visuals consisted entirely of archival footage from the end of World War II, and it was narrated throughout.

The ACMA received a complaint alleging that the Program contained content which exceeded the PG classification.

The ACMA has investigated the broadcaster's compliance with code 4 [Classification] of the SBS Codes of Practice 2014 (revised July 2019) (the **Codes**).

Issue: Classification

PG – Parental Guidance (*Parental guidance recommended for people under 15 years*)

PG programs may be shown at any time.

PG programs may contain adult themes and concepts which, when viewed by those under 15 years, may require the guidance of an adult.

The PG classification signals to parents that material in this category contains depictions or references which could be confusing or upsetting to children without adult guidance. Material classified PG will not be harmful or disturbing to children.

[...]

Themes: The treatment of themes should be discreet and mild in impact. More disturbing themes are not generally dealt with at PG level. Supernatural or mild horror themes may be included.

Violence: Violence may be discreetly implied or stylised and should also:

- be mild in impact, and
- not be shown in detail.

[...]

Finding

The ACMA's finding is that the broadcaster breached code 4.6 of the Codes.

Reasons

The Codes require that all programs broadcast by SBS are classified (with the exception of news and current affairs, sport programs and general information programs). The Program was classified PG with consumer advice displayed at the start of the Program that ‘this program contains content that may distress’ and that parental guidance was recommended. In order to determine whether the Program was classified appropriately, the ACMA has assessed the relevant classifiable elements against the requirements of the PG category.

The complainant submitted:

It beggars belief that this program could be rated as PG. I do not object to the program material, as it was genuine war footage. However, the graphic content of slaughtered concentration camp victims and bodies of people killed through hanging, was very confronting even for an adult and I cannot believe it would only rate as PG, which is one rung above general exhibition and equates with what I have noted as programs that could be mildly offensive to children. I would have thought this type of very disturbing material, would rate as MA, with a warning to everybody that it contains graphic scenes of mass murder. It makes a nonsense of our rating system to be classified as PG.

The SBS submitted:

SBS considered it was important for young people to be exposed to this historically significant material in a controlled and responsible manner. Therefore, SBS took care to edit the original program. It removed the most powerful images and edited the comparable footage to reduce the overall impact of the documentary to make it suitable for a PG audience.

[...]

The PG rating indicates to parents and guardians the program includes material children may find upsetting and may require some guidance.

PG programs may contain adult themes and concepts.

The PG symbol was displayed at the start of the broadcast, along with additional consumer advice that stated, “This program includes content that may distress.”

The PG symbol was displayed again immediately after each of the three advertising breaks in the program. These commercial breaks effectively provide in built pauses for the viewer, further reducing the overall cumulative impact of the program.

Any historical documentary about war is potentially upsetting. In this instance, the documentary’s title, *Hitler’s Last Year*, and the introduction, which included the statement, “Eleven interminable months...those eleven months with the highest death toll of the war,” provide an additional warning to the audience of the gravity of the subject matter they are about to see.

The audience members were provided with ample opportunities to make an appropriate viewing choice.

This program includes images of those injured and killed during the war, also individuals being threatened and coerced, and references to forced labour and violence. The historical distance of these events from today’s audience, and the general knowledge of the audience in relation to those events, combined with the minimal and discreet treatment of the imagery itself, renders the documentary no more than mild in impact.

The images are of their era; one that is far removed from the precision of today’s high definition television imagery. Cameras in the 1940’s lacked clarity; reducing the degree of explicitness of

the subject matter producing relatively blurry imagery. This underscores the historical nature of the material and significantly reduces the potential impact on the audience.

[...]

The complainant is concerned about two aspects of this documentary, namely the remaining images of hangings, of which there are only two images, and also “the graphic content of slaughtered concentration camp victims.” There are two sections of concentration camp material in the documentary. That material, including that of the death marches, amounts to less than 15% of the documentary as a whole.

The first is a still image of a German soldier who has deserted and been killed by the German army. The man wears a sign written in German, which the narrator reads in English, “I am a deserter and I refused to protect German women and children.”

This post-action black and white image runs for eight seconds. The man is clothed. His face is in repose, with his eyes closed. The rope is visible barely, and he appears floating in the space of time long past. The lack of detail such as the individual’s death throes, the individual’s distress, moving footage, bodily contortions, colour, wounds or blood detail, all lessen the impact of this image.

This photograph acts as a symbol of the brutality of war; the inclusion by the program’s makers of this picture at this juncture of the episode reminds audience members discreetly, and without showing in detail, that this body was once alive, and a human being.

The second still image is colourised film footage of the dead bodies of two clothed men hanging upside down in an unnamed Italian square. A third body is briefly shown being hoisted up by the crowd. This image was the final image in a short sequence of 20 seconds which covered the death of Mussolini in Italy on 28 April 1945, an important side event to the main theatre of war in Germany.

The faces of the men are not shown, and nor is the crowd heard. This silence gives a sombre tone to what in real life would have been chaotic. The lack of detail ensures this sequence is accommodated at the PG level in this context appropriately.

[...]

Two segments of concentration camp footage are used in the program. In total, they amount to less than 15% of the total time of the documentary.

There is less than a minute and a half of footage solely of survivors of the camps. While distressing the images of the survivors retain their dignity.

The only dead who are naked are in extreme wide shot, no individual features can be seen, it is the position of their bodies that indicates to the viewer that they are dead. Most of the dead are covered and are lying on the ground being viewed by people in disbelief and incomprehension.

Violence

The Codes state that, at the PG level, depictions of violence may be discreetly implied or stylised and should also be mild in impact and not be shown in detail.

Considering the complaint, submissions from the SBS, and the overall program, the ACMA has assessed two scenes containing depictions of violence against the requirements of the Codes.

Scene 1 – images of the execution of deserters by the German army

At around 27 minutes into the 50-minute program, this scene contains a sequence of black and white still images. The first image is of men being shot in the back by soldiers (one still showing soldiers preparing to shoot a group of men with their backs facing the soldiers and the next showing rifles being shot in the direction of the men, who are surrounded by smoke, visible in total for eight seconds). The Program then zooms into a close-up shot of the body of a soldier lying on the ground with a rope around his neck, with what appears to be some injury detail (visible for four seconds). The final part of this scene zooms into a mid-shot of a male body hanging from a rope, head tilted to the side with a sign around his neck (visible for eight seconds). The sequence features a menacing soundtrack, and the transition between the still-shots is marked by a drumbeat sound-effect. The accompanying narration states:

In Konigsberg, 80 deserters were executed. Often, victim's bodies were left at the roadside with a sign: I am a deserter, and I refused to protect German women and children.

The ACMA acknowledges the SBS' submission that the images in the documentary lack the definition and clarity of images in contemporary photography, and that their impact is therefore reduced. Although the potential harmful effect of the images shown in this scene is mitigated by the fact that they are historic black and white photographs, lacking the definition and clarity of contemporary photographs, violence, and the effects of violence, are shown in detail, due to:

- > the depiction of the moment deadly violence is inflicted (the shooting image) and the effect of violence by hanging;
- > the length of time the still-shots are on screen; and
- > the zooming into images of a dead body with a rope around the person's neck which included a close-up of visible injury detail and a mid-shot of a body hanging from a rope.

Scene 2 – images of concentration camps

Immediately following Scene 1, the Program includes a sequence of around three minutes, dealing with the abandonment of concentration camps by the German army, the 'death marches' some inmates were subjected to, and the liberation of camps by allied troops. A part of this sequence shows the following camera footage of the liberation of the camps near Bergen-Belsen and Ohrdruf:

- > a mid-shot of three emaciated inmates, upper bodies and legs exposed, sitting in what appears to be a camp dormitory;
- > a long shot of piles of bodies in the camp's yard;
- > a mid-long-shot of a group of soldiers, led by what appears to be a general;
- > a mid-long-shot of soldiers standing around bodies on the ground, panning over the bodies and zooming into a close-up of the head of one of the bodies from above. Some marks or scabs are visible on the face and the shot is on screen for around two seconds.

The sequence is accompanied by classical music and the accompanying narration states:

In April 1945, the British entered Bergen-Belsen. They found 30,000 prisoners hovering between life and death. Some 10,000 bodies lay around rotting. The same month, the

Americans entered the Ohrdruf concentration camp, an offshoot of Buchenwald. Eisenhower was overwhelmed. 'I've never had such a shock in my entire life', he confessed.

Like the images in Scene 1, the historical camera footage is black and white and lacks the definition and clarity of contemporary footage. Its visual impact is therefore moderated to a degree. It does, however, contain a level of detail, such as the severely emaciated bodies and extended shots of dead bodies, zooming into a close-up shot of a single body with some injury detail, that, in the ACMA's view, cannot be accommodated within the PG classification. The narration accompanying the scene describes the horrific events in some detail, and the music heightens the sombre tone of the presentation.

The ACMA notes the SBS' submission that the sequence of images in scene 1 are separated by the 'flash frames', which has the effect of breaking any accumulating impact by resetting the viewer's attention. The ACMA does not agree with this argument and considers that while the flash frames may signal discontinuity, this does not offset the cumulative impact of the group of images. The ACMA also acknowledges the SBS' submission that the program was extensively edited to remove stronger depictions of violence. However, the ACMA considers that the portrayal of violence in the scenes described above, while justified by their context and intention, is not discreetly implied or mild in impact, and therefore exceeded the PG-level classification.

In its submissions on the preliminary investigation report, the SBS considered that the scenes identified by the ACMA (scenes 1 and 2) could be accommodated at PG:

The ACMA has taken exception to a liberation scene in which the liberated inmates are shown through "three emaciated inmates, upper bodies and legs exposed." Deleting images of this type would sanitise history; and deny (including by deletion) that inmates hovered between life and death in the camps [...]

[...] this image of General Eisenhower viewing the concentration camps for the first time is precisely the image that ACMA would have SBS remove from this PG documentary or at least tone down. [...]

The sequence is almost entirely in wide shot, and the accompanying narration explains General Eisenhower's shock and devastation at what he was seeing. The camera pans across a yard of dead bodies, all of whom are clothed or covered in some way. The camera pans in on a single face, this is the only close up in the sequence and it is critical to establish historical truth and veracity. [...]

This is a minimal and, in the circumstances, discreet rendition of both hanging and shooting [...] these horrible events were discreetly presented in a manner which rendered them no more than mild in impact and complied with a PG classification.

The ACMA was required to consider the visual depictions of violence, including the effects of violence, against the classification requirements in the Codes which included, relevantly, whether they were discreetly implied or stylised, mild in impact and not shown in detail. This requires consideration of both context and impact.

The ACMA agrees with the SBS' submissions that the depictions discussed above are contextually justified due to their historical accuracy. However, individual depictions can be justified by their context and be historically accurate, but nevertheless contribute to a cumulative impact which exceeds the requirement for violence to be mild in impact. Rather than any single depiction, it is the cumulative impact of depictions of violence in the scenes described above, culminating in close-up shots of corpses with visible injury detail, that is considered by the ACMA to have exceeded the requirement for violence to be mild in impact.

Accordingly, the ACMA finds that these depictions of violence, in aggregate, were not consistent with the requirements of the PG classification.

Themes

The Codes state that, at the PG level, the treatment of themes should be discreet and mild in impact and that more disturbing themes are not generally dealt with.

In dealing with the brutality and hardship of the final war year, the Program includes several themes which are relevant to classification, including mass murder, the holocaust, mass rape, suicide, and extreme trauma. Examples include:

- > The inhabitants of a town 'massacred' by the advancing Soviet army – 'an orgy of violence was unleashed'.
- > Mass sexual assault by troops, who used rape as 'a weapon of war'. This discussion included the quotation of a letter from a Soviet officer who stated, 'women, mothers and their children were lying on both sides of the road and before each of them was a noisy gaggle of men, their trousers down, and our men shot those women, who tried to save their children'.
- > Quoting a letter from a fleeing mother having to bury her daughter, because she 'could no longer carry her'.
- > A ship carrying 7,000 refugees being sunk by a Soviet submarine.
- > Reference to a 'crematorium oven, where they burned 200 bodies per day'.
- > Reference to 'lampshades made of human skin', 'tattooed skins that were collected' and 'shrunken heads', discovered by allied troops liberating a concentration camp.
- > Suicide by the Nazi hierarchy and German civilians including images of people who had committed suicide.

The narration describing these events and themes extends throughout the majority of the Program, with only brief interruptions. It is delivered in a serious tone, and is accompanied by classical music, reflecting the human tragedy of the historic events depicted.

The discussion of individual themes is illustrated with visuals, for example, the discussion of suicides among the German civilian population is accompanied by footage of bodies of German civilians who committed suicide. Additionally, when the narrator makes reference to a table displaying lampshades, tattooed skins and shrunken heads, this was accompanied by video footage of these items.

The SBS further submitted:

These were all horrific events. But it is quite wrong to render them effectively unmentionable before children under the age of 15. [...]

It would involve historical revisionism to sanitise real historical events to remove some or all of those images and their accompanying descriptions.

The ACMA agrees with the SBS's submissions that the content covered in the Program has significant educational merit and could be appropriate for children to watch with parental guidance. In the context of a documentary about the final year of World War II, it is to be

expected that distressing themes will be explored. The intention to educate and, to some degree, cause distress to the audience has merit and is entirely appropriate.

However, the ACMA does not agree with the SBS's submission that the importance of educating people, including young people, about the horrors of WWII and the Holocaust permits transcending the protections envisaged as part of the classification framework – in this case the inclusion, under a PG classification, of the material as broadcast.

It is not the ACMA's role to suggest the removal or editing of certain content from a program. The ACMA's role is to assess the content in accordance with the Code, including assessing the content against the classification category assigned to the program by the broadcaster. The obligation on the SBS is to comply with its Codes and how it does that is a matter for SBS.

While parents have a responsibility to judge for themselves what content they will expose their children to, in exercising that responsibility, they should be reliably informed by a program's classification. As the SBS concedes, children may be upset and even distressed by themes such as those featured in the Program, but the Codes require that the treatment of themes – which were accompanied by depictions of violence – should be discreet and mild in impact and must not be harmful or disturbing to children.

As discussed above in regard to depictions of violence, the ACMA considers that the frequency, level of detail of the discussion and visual illustration of distressing themes, as noted in the examples listed above, had a cumulative impact that was not discreet or mild, and would likely have been disturbing to some children.

Accordingly, the ACMA finds that the Program's treatment of themes could not be accommodated in the PG classification.

As the Program's presentation of both violence and themes could not be accommodated within the PG classification, the ACMA's finding is that the SBS breached code 4.6 of the Codes in relation to the broadcast of the Program.

Attachment A

Complaint

Complaint to broadcaster dated 24 March 2021:

It beggars belief that this program could be rated as PG. I do not object to the program material, as it was genuine war footage. However, the graphic content of slaughtered concentration camp victims and bodies of people killed through hanging, was very confronting even for an adult and I cannot believe it would only rate as PG, which is one rung above general exhibition and equates with what I have noted as programs that could be mildly offensive to children. I would have thought this type of very disturbing material, would rate as MA, with a warning to everybody that it contains graphic scenes of mass murder. It makes a nonsense of our rating system to be classified as PG.

Attachment B

Broadcaster's response and submissions

SBS response to the complainant dated 20 April 2021:

[...]

The program of 20 March was part two of a two part documentary series about Hitler's last year, made by French production companies Cineteve and France Televisions. It contains re-colourised archival footage of the horrific events preceding the fall of the Third Reich and the suicide of Adolf Hitler. Even after all this time such material is hard to view, however, the audience was properly advised in line with the provisions of the SBS Codes of Practice, and the events of those times are well known.

The documentary was a lead in program to SBS World News. SBS considers it is important that the Holocaust is never forgotten, and that particularly younger Australians, who may be unaware of these atrocities, are introduced to this disturbing chapter of modern history.

While images of corpses are shown in this documentary, the archival nature of the footage and the fact that images are often shown from a distance, in numbers and/or without personalisation or other details allows the material to be accommodated at a PG level.

The treatment of the distressing images in this documentary was also discrete in classification terms. When considering that this is a factual documentary about important historical events, the material remained consistent with a PG classification.

SBS's classification code is designed to reflect common Australian community standards, and the code contemplates that the various sensitivities of the audiences are covered by the use of classification categories and accompanying consumer advice. In providing such details at the start of programs, SBS provides parents and guardians with the opportunity to make informed viewing choices for those in their care. In this case the program carried the appropriate warnings. [...]

SBS submission to the ACMA dated 11 June 2021 [all images removed]:

[...]

For the reasons provided below, SBS considers it has complied with the relevant provisions of the SBS Codes of Practice 2014 (revised July 2019), which are Code 4 (Television Classification) including Code 4.1 (Introduction), Code 4.3 (Violence), Code 4.6 (Classification Categories), Code 4.7 (Classification Symbols) and Code 4.8 (Consumer Advice). For the assessment of this program, the applicable clauses of those provisions are:

Code 4.1 (Introduction) - what informs SBS's classification system. It states:

- The guiding principle in the application of the following classifications is context. What is inappropriate and unacceptable in one context may be appropriate and acceptable in another.
- Factors to be taken into account include: the artistic or educational merit of the production, the purpose of a sequence, the tone, the camera work, the intensity and relevance of the material, the treatment, and the intended audience.
- SBS believes that the integrity of programs is best retained if programs are broadcast unaltered. However, SBS will schedule programs or, if necessary, modify them in

accordance with the SBS classification categories (see 4.6) to ensure that they are suitable for broadcast, or for broadcast at particular times.

Code 4.3 (Violence)

In assessing program content involving violence, consideration is given to numerous factors including:

- context;
- degree of explicitness;
- propensity to alarm, distress or shock;
- significance in relation to the message; and
- social importance.

SBS believes that violence should not be presented in such a manner as to glamorise it or make it attractive. It is important when violence is portrayed that, as a rule, its serious consequences are not glossed over.

Code 4.6 (Classification Categories)

PG – Parental Guidance (Parental guidance recommended for people under 15 years) PG programs may be shown at any time.

PG programs may contain adult themes and concepts which, when viewed by those under 15 years, may require the guidance of an adult.

The PG classification signals to parents that material in this category contains depictions or references which could be confusing or upsetting to children without adult guidance. Material classified PG will not be harmful or disturbing to children.

Parents may choose to monitor the material for their children. Some may choose to watch the material with their children. Others might find it sufficient to be accessible during or after the viewing to discuss the content.

Themes: The treatment of themes should be discreet and mild in impact. More disturbing themes are not generally dealt with at PG level. Supernatural or mild horror themes may be included.

Violence: Violence may be discreetly implied or stylised and should also:

- be mild in impact, and
- not be shown in detail.

Nudity: Nudity outside of a sexual context should not be detailed or gratuitous.

Code 4.7 (Classification Symbols)

The classification symbol of the PG, M or MA15+ program being shown will be displayed at the start of the program.

Code 4.8 (Consumer Advice)

In particular, SBS will provide appropriate consumer advice at the start of a PG classified program where SBS considers that the program contains material of a strength or intensity which SBS reasonably believes parents or guardians of young children may not expect.

Comments on the bona fides of the documentary

Hitler's Last Year was commissioned by the French public broadcaster for the France 2 channel, and it was further broadcast by the Belgian public broadcasters RTBF and VRT, the Swiss public broadcaster RTS, TV5 and Smithsonian Channel in Canada, and National Geographic Channels internationally.

The production company Cinétévé is an independent French production company which produces TV programs and feature films on subjects including history, human rights, and arts and culture.

Hitler's Last Year was made with the participation of France Televisions, Planete+, the RTBF, Viewcom-VRT and the French Ministry of Defence. [...]

Hitler's Last Year leads viewers through eleven months of World War II in Europe. The documentary entirely consists of verified archival material. This includes some unseen material from the Russian, German and American archives, footage of the fighting on all fronts, the horror of the concentration camps as well as the impact of the war and the genocide on the German civilian population.

Film sources included: Agentur Karl Höffkes, AP Archive; L'Atelier des Archives, Archives de Guerre; Astfilm Productions, British Pathé; Bundesfilmarchiv/Transit Film GmbH; Friedrich-Wilhelm-Murnau- Stiftung/Transit Film GmbH, Chronos Media; CriticalPast, ECPAD; Film Images (Russian State Film & Photo Archive Krasnogorsk - RGAKFD et Gosfilmofond); Filmoteka Narodowa; Gaumont Pathé Archives; Archive Films/Getty Images; Imperial War Museum; Institut National de l'Audiovisuel; ITN Source Reuters/Fox Movietone/Images of War; La Camera Stylo; George Stevens Collection at the Library of Congress; National Archives and Records Administration; Netherlands Institute for Sound & Vision; Office National du Film du Canada. Some of this material was re-colourized for the documentary, however such colourization remained muted and sombre.

The photographic material contained predominantly black and white images obtained from AKG – Images; Yevgeny Khaldei/Agentur Voller Ernst/dpa/Bettmann/Hulton-Deutsch/Corbis Bundesarchiv; Keystone, Heinrich Hoffmann, Imagno/Getty Images; Imperial War Museum; KZ-Gedenkstätte Dachau; Memorial and Museum Auschwitz-Birkenau; Roger-Viollet; Rue des Archives; Walter Frentz/Ullstein Bild; United States Holocaust Memorial Museum; Yad Vashem.

Scheduling and purpose

Hitler's Last Year was broadcast in the lead up to the 80th anniversary of the end of the 2nd World War in Europe. It focused on the military battles between the Allied, Soviet, and German forces including the fighting along the Western front, the bombing of Dresden and the advance of Stalin's troops along the Eastern front. Finally the documentary covered the discovery and liberation of the concentration camps, the Allies' capture of Berlin and Hitler's suicide.

The documentary has been extensively used by subscription services in Australia, which classified it M and made it available at all times of the day. The SBS version of *Hitler's Last Year* was edited to make it suitable for a PG audience.

SBS considered it was important for young people to be exposed to this historically significant material in a controlled and responsible manner. Therefore, SBS took care to edit the original program. It removed the most powerful images and edited the comparable footage to reduce the overall impact of the documentary to make it suitable for a PG audience.

SBS TV has an ongoing 5:30pm weekend slot on Saturdays and Sundays which explains and explores the history of the World Wars. This is an established time slot with an established audience, and it continues throughout the year.

This time slot is suitable both for viewers who have a connection to or interest in the topic, as well as providing an opportunity for younger audiences to develop an understanding of what occurred in the past and the ways in which it has shaped present day Australia.

Classification and time zone

Episode one was shown on 14 March and episode two, which is the subject of this investigation, was broadcast on 20 March at 5.35pm with appropriate classification advice. SBS classified the episode PG (Parental Guidance).

The PG rating indicates to parents and guardians the program includes material children may find upsetting and may require some guidance.

PG programs may contain adult themes and concepts.

The PG symbol was displayed at the start of the broadcast, along with additional consumer advice that stated, "This program includes content that may distress."

The PG symbol was displayed again immediately after each of the three advertising breaks in the program. These commercial breaks effectively provide in built pauses for the viewer, further reducing the overall cumulative impact of the program.

Any historical documentary about war is potentially upsetting. In this instance, the documentary's title, *Hitler's Last Year*, and the introduction, which included the statement, "Eleven interminable months...those eleven months with the highest death toll of the war," provide an additional warning to the audience of the gravity of the subject matter they are about to see.

The audience members were provided with ample opportunities to make an appropriate viewing choice.

This program includes images of those injured and killed during the war, also individuals being threatened and coerced, and references to forced labour and violence. The historical distance of these events from today's audience, and the general knowledge of the audience in relation to those events, combined with the minimal and discreet treatment of the imagery itself, renders the documentary no more than mild in impact.

The images are of their era; one that is far removed from the precision of today's high definition television imagery. Cameras in the 1940's lacked clarity; reducing the degree of explicitness of the subject matter producing relatively blurry imagery. This underscores the historical nature of the material and significantly reduces the potential impact on the audience.

Hitler's Last Year honours the experiences of those who died and those who fought while educating the audience about the war.

Material removed from the documentary to bring it in line with the PG classification requirements

The unedited version of this documentary runs for 50 minutes and 48 seconds in duration. The documentary as broadcast by SBS on 20 March was 48 minutes and 19 seconds in duration.

SBS carefully reviewed this documentary prior to broadcast and removed all material it considered exceeded the PG classification. SBS made 14 edits to the program, removing all moderate to strong imagery, to ensure the documentary complied with the PG classification. The edits were made throughout the program, including some concentration camp and hanging scenes. Some of the 14 edits include sequences where multiple images were removed.

Below are four examples of the material which was considered unacceptable and was removed from the original documentary. [images removed]

1. Edited images included footage of decapitated heads next to a group of headless naked bodies. The narrator states, "In the basement of this building a laboratory performed pseudo-medical experiments...To the Nazis the Jews, the Poles, were nothing more than slaves or fertilizer." This image was removed while the description remained and was used with a different image of covered vats in a building.
2. Edited images include some involving rescued prisoners on liberation of the camps, such as this image from footage where an individual is depicted in a state of immense vulnerability, with what appears to be faecal matter visible on his naked and emaciated body. It is considered this image is above the PG level and was removed. All survivors of the camps in the documentary as broadcast are shown clothed.
3. Images edited included black and white still photographs of the bodies of women, with legs parted, and genitals exposed, one with what appears to be torn undergarments, and one with undergarments absent. The narration refers to sexual assaults by the advancing soldiers: "The Red Army became experts in nurturing hatred, and in its path the enemies' womenfolk were particularly targeted. Rape became a weapon of war..." The narration was retained and used with an image of a destroyed building and a tank moving through the countryside.
4. Sequences that were edited included one where a captured German soldier is presented to a Soviet commander and then taken into the forest and hanged to death. The unedited documentary shows the soldier being killed by hanging. He is made to stand on a sleigh which is kicked away, causing him to fall to his death. His body is seen swinging from a tree. SBS considered this material did not comply with PG and removed it.

The retained footage, which lasts for less than 3 seconds, shows only the German soldier in military uniform being presented to the commander. This is not a gratuitous scene it captures the reality and risk of being of soldier. The narration states, "Anyone suspected of being a Nazi could be shot, almost a hundred thousand Germans were summarily executed."

The material that remained in the program as broadcast

The complainant is concerned about two aspects of this documentary, namely the remaining images of hangings, of which there are only two images, and also “the graphic content of slaughtered concentration camp victims.” There are two sections of concentration camp material in the documentary. That material, including that of the death marches, amounts to less than 15% of the documentary as a whole.

The two hanging images

The first is a still image of a German soldier who has deserted and been killed by the German army. The man wears a sign written in German, which the narrator reads in English, “I am a deserter and I refused to protect German women and children.”

This post-action black and white image runs for eight seconds. The man is clothed. His face is in repose, with his eyes closed. The rope is visible barely, and he appears floating in the space of time long past. The lack of detail such as the individual’s death throes, the individual’s distress, moving footage, bodily contortions, colour, wounds or blood detail, all lessen the impact of this image.

This photograph acts as a symbol of the brutality of war; the inclusion by the program’s makers of this picture at this juncture of the episode reminds audience members discreetly, and without showing in detail, that this body was once alive, and a human being.

The second still image is colourised film footage of the dead bodies of two clothed men hanging upside down in an unnamed Italian square. A third body is briefly shown being hoisted up by the crowd. This image was the final image in a short sequence of 20 seconds which covered the death of Mussolini in Italy on 28 April 1945, an important side event to the main theatre of war in Germany.

The faces of the men are not shown, and nor is the crowd heard. This silence gives a sombre tone to what in real life would have been chaotic. The lack of detail ensures this sequence is accommodated at the PG level in this context appropriately.

The narration mentions that the crowd abused Mussolini’s body and that of his mistress. It shows an image of their bodies and others on the ground. News of these events caused Hitler to say, as quoted in the program, “Dead or alive I don’t want to fall into the hands of the enemy.”

The concentration camp scenes

Two segments of concentration camp footage are used in the program. In total, they amount to less than 15% of the total time of the documentary.

There is less than a minute and a half of footage solely of survivors of the camps. While distressing the images of the survivors retain their dignity.

The only dead who are naked are in extreme wide shot, no individual features can be seen, it is the position of their bodies that indicates to the viewer that they are dead. Most of the dead are covered and are lying on the ground being viewed by people in disbelief and incomprehension.

The remaining material is of the camps themselves – the empty buildings, the barbed wire and the collection of potentially distressing items discovered within.

The first section

This section commences with the discovery and liberation of the Auschwitz concentration camp by the Soviet Army. It says, “The Soviets found seven thousand deportees abandoned there, seven thousand survivors for one and a half million people murdered.” The narration goes on to capture the bewilderment of the Allies at the discovery of this extermination system. It says, “When the British reporter, Alexander Worth, entered the camps of Majdanek and Treblinka in July ‘44, he immediately wrote an article on how these death machines worked, the sorting, the gas chambers, the crematoriums, the bones ground as fertilizer for the adjacent cabbage fields. But the BBC did not broadcast his report and the New York Herald Tribune wrote, ‘we had better await confirmation of the horrors we are hearing about from Lublin, despite everything we know of the Nazi’s savagery these doings appear unthinkable.’

The weight of the horror of this narrative is principally carried by the script in the documentary. The accompanying imagery is contained and by comparison relatively muted.

In total this section runs for 3 minutes and 53 seconds.

Of that, the only footage which shows the camp survivors runs for 44 seconds in total. These people are clothed and shown in a respectful and sombre manner. They either are walking covered by blankets or are seen staring as a group at the camera through the barbed wire, while another woman is on a stretcher being rendered assistance by the liberating soldiers.

There is a second section which involves a range of people, including some indistinguishable camp survivors. The Soviet Army was unhappy with the sombre footage they obtained of the liberation of Auschwitz on the day and so re-enacted the event a few days later. They used a mixture of survivors and local people to make the liberation appear more animated. The documentary notes this film was never actually shown at the time, and clearly no one in it is depicted in distress.

Apart from these two segments, the remaining images are of buildings, and a few Soviet soldiers inspecting the mountains of human clothing, spectacles and human hair that had been collected there. Again, the images are contained, and it is the narrative which details the horror of what is shown.

The second section

The second section of concentration camp footage runs for exactly 3 minutes in total and is more comprehensive. It covers the Nazi death marches, the liberation of Bergen-Belsen by the British in April 1945, the liberation of the Ohrdruf camp by the US army as well as the decision by General Eisenhower to order that Germans living near the camps visit them to witness for themselves the horror of the Nazi genocide.

The death march sequence consists of mainly black and white still imagery. Where dead bodies are seen, they are in extreme wide shot and no identifying features or wounds are visible.

The material covering the Bergen-Belsen section, comprises of both black and white and some recoloured footage. All detainees are clothed and, while some are clearly emaciated, they are in the process of being saved, and movingly an exhausted woman expresses her gratitude by reaching for the hand of a soldier.

When the documentary records that, “some 10,000 bodies lay around rotting,” the image used is an extreme wide shot of some bodies. The bodies are discreet and at a distance. Again, the narrative is more descriptive than the image.

In the final part of this section, General Eisenhower visits the Ohrdruf camps and the narration states he said, “I have never had such a shock in my entire life.” He orders the entire population of the next-door town to visit the camp.

The groups of the dead, in the sequence below, lack personalising detail and are not gratuitous.

The image above is not typical of the camp visiting scenes. Normally the focus is on the reaction of those seeing these atrocities for the first time, such as in the image below, rather than on the images of the dead themselves, perspectives which render it suitable for PG viewing.

Comments in relation to images of bodies

Any historical documentary dealing with the discovery of the concentration camps must deal with images of the victims of those camps. While such images are still distressing, they cannot be omitted. They are regularly included in PG documentaries about the Holocaust. Such material is entirely predictable in a documentary called, *Hitler's Last Year*. The bodies of victims are seen massed together in wide or extreme wide shot. These are collective images which obscure individual details and emphasises the extent and horror of the genocide while treating the victims in a discreet manner.

There is only one close-up of a dead camp victim. It is a stylized and symbolic image at the end of a moving sequence of General Eisenhower inspecting a mass of bodies all of whom are clothed or covered with blankets at the Ohrdruf camp. It is not possible to read the facial features of the dead person, or the sex of the person. The face is not distorted or grotesque. It is a mild poignant record of the horror of the genocide, and in effect representing the unmasking of it.

The narration states, “Eisenhower was overwhelmed, ‘I have never had such a shock in my entire life,’ he confessed.”

Conclusion

Hitler's Last Year was a quality production with significant educational merit. The material is entirely based on important archival records.

The discreet treatment helps mitigate any intensity of the material, and the footage is relevant to the subject matter and is not used gratuitously. Given the extent of the genocide and the destruction of Europe, the material selected is responsible and minimal. It is sufficient to explain the story without being graphic or providing what could have been considered strong detail. The treatment of the subject matter and classifiable elements was, at all times, measured and responsible.

SBS has taken care to ensure the program complies with the PG classification by carefully editing the material and ensuring that viewers were given the appropriate consumer advice and had time to make an informed viewing choice.

The importance of this history being known and shared includes our responsibility to honour those who are dead by not unnecessarily sanitising the scope of the war crimes committed. SBS continues to play a part in this important public service.

SBS considers its broadcast of *Hitler's Last Year*, as broadcast on 20 March, complied with the SBS Codes of Practice, including Code 4 (Television Classification).

SBS submission to the ACMA dated 27 August 2021:

[...] The ACMA has taken exception to a liberation scene in which the liberated inmates are shown through “three emaciated inmates, upper bodies and legs exposed.” Deleting images of this type would sanitise history; and deny (including by deletion) that inmates hovered between life and death in the camps - and it would be equally wrong and misleading not to make this available to those under the age of 15. [...]

SBS also makes a further point. This is an historical documentary about significant historical events. It is misconceived to say that the program has an “overall tone that alternates between drama and tragedy.” It is misconceived to the point of revisionist to treat a factual historical documentary in this manner. Real, highly significant, historical events should not be reduced in the mind of the viewer to a dramatic fantasy, fabrication or “movie”.

SBS specific comments on the preliminary report in relation to violence and themes

[...] This documentary covers a period of history that is amongst the most violent and searing that humanity has experienced. The events of the last year of WW2 in Europe included the deadly advance of the allied forces, the rape of women in war, the killing of army deserters and the genocide of the Jews (including *via* gas chambers), and the mass murder of other groups of people (e.g. homosexuals). These were all horrific events. But it quite wrong to render them effectively unmentionable before children under the age of 15.

This historical documentary was entirely constructed from verified archival photographs and film from key public and private institutions. The strength of material in those archives is deep and sometimes disturbing. The historical images of record used throughout *Hitler's Last Year* are at the lower end of the horrendous range of material available. The disturbing imagery was not used. Yes, the material used is distressing – and so it should be. If it were otherwise the viewer would be left with a false, inaccurate, and misleading understanding of these violent atrocities – the exemplar of historical revisionism.

Hitler's Last Year presents in a discreet manner the many deadly chapters of the last year of WWII in Europe, including the killing of soldiers and civilians, and the genocide of the Jews and others, rendering the overall program low in impact in classification terms. What remains in the documentary is troubling, dark and scary – but at a minimal level and is consistent with historical veracity and PG classification. That is the result of the proper production and editorial judgments involved in the classification of this historical documentary.

There are alternatives. The subject may be banished entirely or reduced in meaninglessness, or it can be sanitised into a children's story. But where a subject forms part of a compulsory school curriculum, appropriate material may be edited and tailored to the viewer's level whilst maintaining historical veracity. That was the choice made here.

Anything lesser (or weaker) involves historical sanitisation. That is a lesser degree of revisionism – but revisionism it is. And that is what the ACMA's preliminary finding requires – indicating that for any PG rendition of this real historical fact the SBS must “clean up” the war and downplay a genocide to make it slightly this disturbing. The point is made nowhere so cogently as in the preliminary finding's criticisms of the choice of “sombre classical music and the accompanying narration,” and “classical music, giving the Program an overall tone that alternates between drama and tragedy.”

By contrast, a different program could have been produced, using higher level material, indeed using the material that the SBS removed, as was detailed in the initial submission. The impact then would have been much stronger. That different program would have required higher level classification – and eliminated most of the junior high school curriculum audience.

SBS considers that diluting or reducing any further the impact of the images and material used would create a fake “truth”: i.e. that the events of Hitler’s Last Year were only mildly troubling. This is difficult material that at times sits at the higher end of PG material under Code 4.6; but it does not exceed it. SBS acknowledges that at times it takes the viewer towards the higher end of the classification – but that is very different from exceeding it. Even at its most forceful, the material stays within the PG classification.

A certain level of awareness is required to appreciate and understand the events of Hitler’s last year. The program is not for, or classified for, a general audience (G classification); and not directed to a general audience of young children (G programming). It is classified for parental guidance (PG) for an audience that includes the young high school students for whom learning about war, including WW2; Nazis; and Hitler’s campaign to exterminate Jews and others, is essential.

Holocaust education is mandatory in NSW and Victoria for students in years 9 and 10. The 2nd World War is also taught in other states and territories to a similar age group. While some of this group would be fifteen many others would be fourteen years of age. The effect of the ACMA’s preliminary finding is to say this material is not suitable for those students.

SBS disagrees and considers that it is increasingly important to educate young Australians, and not just the cohort studying history, about the lessons of war and the dangers of race hatred.

In October 2019, two incidents of anti-Semitism in Victoria, respectively against a 12 year old boy and a 5 year old boy, made headlines around Australia and prompted the Victorian Government to require that the Holocaust be taught in junior high school. In the most prominent case, a 12 year old Jewish boy was forced to kiss the feet of a 16 year old boy. The 16 year old was charged and appeared before the Children’s Court.¹

In February 2020, the Victorian Education Minister, Mr James Merlino, announced that “All government secondary school students in years 9 and 10 will be taught about the Holocaust from this year, to tackle rising anti-Semitism, racism and prejudice in our schools and broader society.” He said “Anti-Semitism is on the rise around the globe and sadly we are not immune in our own Victorian community.”

On 15 August this year, the Director General of ASIO, Mr Mike Burgess, told the SMH “that Australians as young as 16 are being radicalised to support a white-power race war, and that half of ASIO’s most important domestic anti-terrorism cases now involve neo-Nazi cells and other ideologically motivated groups.” He explained the shift away from religiously motivated terrorism is being fuelled by disinformation surrounding other global events, including Nazism and the Holocaust.²

On 8 March 2021, the UN and UNESCO held its first advisory group meeting on Holocaust denial and distortion. Its stated aim was to combat contemporary trends of Holocaust denial and distortion and “to promote historical literacy and to prevent antisemitism by building individual’s capacity to distinguish the irrefutable facts of the Holocaust from attempts to distort its history”.³

On 24 June 2021 the US and German governments announced a joint a US-German Holocaust Dialogue seeking to reverse the trends towards Holocaust denial that are gaining

¹ <https://7news.com.au/news/vic/jewish-boy-forced-to-kiss-feet-of-muslim-classmate-as-community-warns-antisemitism-reaching-point-of-no-return-c-487202>

² <https://www.smh.com.au/national/threat-of-white-power-race-war-grave-concern-to-asio-says-chief-20210812-p58i9u.html>

³ <https://en.unesco.org/news/qa-new-research-map-holocaust-denial-and-distortion-online>

traction on social media during the coronavirus pandemic amid a surge in political populism across Europe and the US.

The Australian treasurer, Mr Josh Frydenberg, speaking on Melbourne Radio station 3AW on Holocaust Memorial Day this year, commented that anti-Semitism was on the rise locally, and Holocaust denial was in evidence globally. He said:

“Let’s not forget what US general Dwight Eisenhower said when he confronted those horrific images at the [concentration] camps in 1945 as part of the allied forces – he said there would come a day when people would deny the Holocaust ever happened.”⁴

Treatment of violence

And yet this image of General Eisenhower viewing the concentration camps for the first time is precisely the image that ACMA would have SBS remove from this PG documentary or at least tone down. The ACMA finding focussed on a three-minute sequence covering the death marches, concentration camps and the liberation of those camps by allied troops. Nothing in the four points that ACMA nominated exceeds proper PG classification for violence:

- a mid-shot of three emaciated inmates, upper bodies and legs exposed, sitting in what appears to be a camp dormitory;
- a long shot of piles of bodies in the camp’s yard;
- a mid-long-shot of a group of soldiers, led by what appears to be a general;
- a mid-long-shot of soldiers standing around bodies on the ground, panning over the bodies and zooming into a close-up of the head of one of the bodies from above. Some marks or scabs are visible on the face and the shot is on screen for around two seconds.

The image that “appears to be a general” is the footage of General Eisenhower, then the Supreme Commander of the Allied Force in Europe, entering the Ohrdruf concentration camp - the first Nazi camp liberated by US troops. This is seminal historical footage that SBS considers essential for inclusion in this historical documentary at PG.

The sequence is almost entirely in wide shot, and the accompanying narration explains General Eisenhower’s shock and devastation at what he was seeing. The camera pans across a yard of dead bodies, all of whom are clothed or covered in some way. The camera pans in on a single face, this is the only close-up in the sequence and it is critical to establish historical truth and veracity.

This single face is both real and symbolic. It is the human face of the Holocaust, and the face of humanity amid horror [image supplied by SBS not included in this report].

It contradicts the lies of Holocaust deniers who claim that Jews were not exterminated. It is the one face which represents the genocide of more than six million Jews who died in the Holocaust. It is an essential image in the program.

Code 4.6 permits a mild and contained image. Here the viewer cannot be sure if this is the face of a man or a woman, as the heads of camp inmates were often shaved. The person’s

⁴ <https://www.theguardian.com/australia-news/2021/jan/27/antisemitism-and-holocaust-denial-on-the-rise-in-australia-josh-frydenberg-warns>

face is seen from above and is side on. The ACMA itself was unable to define the irregularities on the face, noting only that 'some marks or scabs are visible.' Yes, there are. But what do these represent? The harshness of life in the concentration camp? The effect of the gas on the body? Exposure to the outside elements? Whatever they are, it is a contained and controlled rendering of horror. Removing these elements would involve revisionist digital correction.

There are many more horrific and disturbing images available to choose from. But the sound historically true choice is this image, which is intended to cause the viewer to reflect upon this person's death as well as the deaths of more than one million victims of Auschwitz alone.

In the language of code 4.6 the image is a discreet rendering of the death by extermination. It is also, and should be to anyone capable of comprehension, a distressing image.

The same may, and should, be said of the image of "a long shot of piles of bodies in the camp's yard". This is a wide shot that enables the viewer to comprehend that a vast number of people were killed at the camps being reported, including Auschwitz, Ohrdruf/Buchenwald, Bergen- Belsen [image supplied by SBS not included in this report].

The image is of collective naked bodies that are individually indistinct as human mounds spread across an open space. It is impossible to say how many corpses are seen here. But it is significantly less than the more than six million people systematically exterminated in the gas chambers. Again, it is a symbolic image, which in classification terms, is rendered discreetly.

SBS considers the image no more impactful, and generally less so, than the black and white image (seen here) contained in the British school books for 12 year old students produced by UCL Centre for Holocaust Education.⁵ The book is part of the Key Stage 3 (commonly abbreviated as KS3) curriculum for pupils are aged between 11 and 14 – and is now referenced by the Catholic education system in South Australia.

The text describes the black and white image this way:

"bodies being burnt in the open at Auschwitz-Birkenau, August 1944. This photograph was taken in secret by a Jewish man forced to work in the gas chambers. The camera was smuggled into the camp by the Polish resistance movement. The photograph is one of the few we have of the killing processes at Auschwitz-Birkenau. The victims are believed to be Hungarian Jews."

The image used by SBS showed bodies lying in the open. It does not show bodies being burnt, smoke rising from those bodies, or camp personnel standing about as this happens. While 12 year old British school children can see that, the ACMA finds the image the SBS selected was too strong at PG. SBS disagrees with any suggestion that this image within this context is too strong at PG and should be deleted.

The third concentration camp image to which the ACMA took exception shows "three emaciated inmates, upper bodies and legs exposed, sitting in what appears to be a camp dormitory". These three men are all clad respectfully. They are wearing shorts of some sort and retain their dignity. The accompanying narration makes it clear they are being rescued from Bergen-Belsen.

⁵ The UCL Centre for Educational Leadership was formerly known as the London Centre for Leadership in Learning (LCLL) and is described as the UK's largest university-based centre for research, teaching, development and innovation in educational leadership.

The background of the image shows British soldiers approaching to help them. What is being captured here is the moment of liberation in the camps. These are the ones who survived the Holocaust. There is the glimmer of a smile on the lips and eyes of the man of the right of frame as if he appreciates he has been rescued from the jaws of death. This image sits comfortably at PG classification. In context it is an uplifting scene rather than a distressing one and has resonance with well-known images of the liberation of Changi POW camps.

The second section of material in relation to the ACMA noted concerns is about the Violence provisions in Code 4.6 in relation to the depiction of the killing of deserting German soldiers at Konigsberg. The complaint did not raise the Konigsberg shooting scene. The complaint is about camps and the “bodies of people killed through hanging”. The only hanged bodies noted by the ACMA are two images at the end of the Konigsberg scene.

The ACMA is of the view that the depiction of violence contained some detail, due to:

- the depiction of the moment deadly violence is inflicted (the shooting image) and the effect of violence by hanging;
- the length of time the still-shots are on screen; and
- the zooming into images of a dead body with a rope around the person’s neck which included a close-up of visible injury detail and a mid-shot of a body hanging from a rope.

The majority of *Hitler’s Last Year* is concerned with the advancement of the Allied troops on Germany. It contains footage of various key battles on both the Western and Eastern fronts. Among that extensive coverage of the activity of the German army, the Konigsberg section is a relatively short section, in total it runs for 45 seconds in a program that runs for just over 48 minutes.

It discusses and shows the treatment of German soldiers who deserted the Third Reich, along with some civilians in Konigsberg who had refused to be arbitrarily conscripted into the by then depleted German army. These civilians, along with deserting soldiers who no longer believed that Hitler would win the war, were either shot or hanged. Again, this is uncomfortable and difficult material. But it is historically accurate – and is required.

The Konigsberg scene consists of five single images, which are edited together to run in sequence. It is rendered in a contained and responsible manner and it stands as a reminder to the rising tide of Neo Nazis in Australia, that the Nazis were brutal to their own people as well as to the civilian population [image supplied by SBS not included in this report].

The sequence begins with a Germany military officer, apparently reading out an order, and in the background are two men with their backs to the camera and their hands tied behind their backs.

The next image shows the two men in the background, again with their backs to the camera and faces concealed; while in the foreground three German soldiers have their rifles drawn, preparing to shoot. In the third image, smoke is visible indicating the soldiers have fired their rifles; and the two men are still standing.

Clearly the viewer would assume that in the next moment these men will fall to the ground dead, but that moment is not shown. Importantly here the men are still standing, SBS responsibly limiting the detail and reducing the impact to no more than mild.

This is a discreet look at a firing squad in wartime. It is also indicative. The viewer sees just two deserters in the firing line. The narration describes 80 deserters having been shot at Königsberg.

The final two images are the only two “hanging” images referred to in the preliminary finding. The images have a relevant factual function. They record that the Reich also killed deserting soldiers by hanging and placing their bodies by the roadside to intimidate the local population.

In the first image the deserter is wearing his Nazi uniform, his hands are tied, and a rope is around his neck demonstrating the means of his death. The rope is clean, and the viewer’s eyes are drawn to the look of fear in the deserter’s eyes. It is a difficult and uncomfortable image – but death is an integral part of the depiction, and it is rendered discreetly.

The second and final image is a clad corpse of either a civilian or deserting soldier, the clothing could suggest either position. In this image, the rope is barely seen; and the deceased man’s face is calm. The viewer’s eyes are drawn to the sign around his neck, which the narration interprets as saying “I am a deserter and I refused to protect German women and children”. In the background a transport convoy of local people appear to be looking back at the hanged man.

The Nazis used these corpses among many others for propaganda purposes, to ensure fear and compliance as their regime unravelled.

In assessing what was described as the Königsberg scene, it is also essential to consider what was not shown. There is no moving film of either the shootings or the suicide. There was no sound of the command to shoot or guns being fired. There are no screams, pleadings, or moaning by the victims. There is no showing of the tying of the knot. No vision of feet swinging behind a hangman’s noose. There is no graphic detail of any of wounds on corpses, no bodily fluids or substances such as blood and faeces are seen. The corpses are de-personalised, they are not identified by name or even by their role as a husband, father or son. They are briefly shown as evidence of how war is exercised, not only against the enemy but also against the perceived enemy within.

This is a minimal and, in the circumstances, discreet rendition of both hanging and shooting.

In presenting the five Königsberg still images the camera moves, zooming in and out, creating movement that infers that these images are now frozen in time. Simultaneously, as each image changes, a camera flash has been inserted as a stylised device. These flashes disrupt the viewer’s focus, each flash causing the viewer to refocus, in doing so the viewer is reminded that these are historical images which are of no direct threat to them today. Within the context of a historical documentary these horrible events were discreetly presented in a manner which rendered them no more than mild in impact and complied with a PG classification.

The Königsberg sequence shows the brutality of the Nazis against their own men, these images like the earlier image of the single face of the camp victim are required to prove that people died, not some faceless army nor some abstract person. History requires that the truth be depicted and not sanitised to the point that it is shown as lesser than it is.

The Königsberg sequence comes immediately before the concentration camps scenes discussed earlier, and any residual impact from the Königsberg scene is also reduced by the scale of the genocide that followed.

Addressing anti-Semitism

UNESCO's "Addressing anti-Semitism through education; guidelines for policymakers" published in 2018 called on policy makers to educate students about anti-Semitism teaching about the Holocaust and address the "dangerous implications of Holocaust denial and distortion". And yet "ACMA does not agree with the SBS's submission that the need to educate people, including young people, about the horrors of WWII, permits the inclusion, under a PG classification, of the footage as broadcast."

The ACMA notes that in "dealing with the brutality and hardship of the final war year, the Program includes several themes which are relevant to classification, including mass murder, the holocaust, mass rape, suicide and extreme trauma. Examples include:

1. Reference to 'one and a half million murdered' in Auschwitz.
2. The inhabitants of a town 'massacred' by the advancing Soviet army – 'an orgy of violence was unleashed'.
3. Mass sexual assault by troops, who used rape as 'a weapon of war'. This discussion included the quotation of a letter from a Soviet officer who stated, 'women, mothers and their children were lying on both sides of the road and before each of them was a noisy gaggle of men, their trousers down, and our men shot those women, who tried to save their children'. Quoting a letter from a fleeing mother having to bury her daughter, because she 'could no longer carry her.'
4. A ship carrying 7,000 refugees being sunk by a Soviet submarine.
5. Reference to a 'crematorium oven, where they burned 200 bodies per day'.
6. Reference to 'lampshades made of human skin', 'tattooed skins that were collected' and 'shrunken heads', discovered by allied troops liberating a concentration camp.
7. Suicide by the Nazi hierarchy and German civilians including images of people who had committed suicide."

It would involve historical revisionism to sanitise real historical events to remove some or all of those images and their accompanying descriptions. Worse, this would create and foster the false and dangerous narrative of Holocaust deniers and Neo Nazis.

SBS takes very seriously its duty to counter any such misinformation.

It is equally wrong to misrepresent real events by "toning" them down to the point of making them any more comfortable. The cumulative impact of the descriptions of themes raised by the ACMA creates a comprehensive picture of the complexity of this period of WW2. A complete description of the Hitler's war is possible because these seven major aspects are covered, factually and with minimal detail. Such a composite picture of war needs to be established within this documentary and can be accommodated at PG. It is wrong to delete historical facts and events that never should be forgotten. *Hitler's Last Year* is an entirely accurate documentary about events which changed the world.

Treatment of themes

The ACMA's preliminary report says that the:

... narration describing these events and themes extends throughout the majority of the Program, with only brief interruptions. It is delivered in a fast-paced, authoritative manner, and is accompanied by classical music, giving the Program an overall tone that alternates between drama and tragedy.

SBS is troubled greatly by this description from the regulator.

How else can a historical documentary which runs for less than an hour about the many major events that blighted Europe during the last year of the Second War World be other than fast paced? What should the narrative be other than authoritative? SBS does not consider that it should lower the tone or impact by preferring a more casual presentation or replacing the classical music. A more casual tone or lighter music would be inappropriate and disrespectful to the subject matter. The complainant was not suggesting that the accompanying music be changed or that the music used was inappropriate.

The overall tone does not alternate between drama and tragedy, both of which are constructed fictional narratives. The overall tone remains anchored firmly in historical reality. The audience's emotions are contained and controlled in that space; and respond to it in that space; a space which as the years pass by is further and further removed from the viewer.

The documentary does include dramatic re-enactments. It does not create drama. It records reality. The audience does not hear from any victim. There is no sound of the cry of any victim. There are no interviews in this documentary; no direct witness accounts from people directly involved, or their descendants.

Save for a short historical grab of Hitler making a speech; and a brief grab from Marlene Dietrich entertaining Allied troops, the only voice heard is the voice of a single narrator – until at the end of program, when the voice of (then) General Eisenhower announces the unconditional surrender of Germany which ended the war in Europe. When individual people are quoted, it is the single narrator who quotes them. Again, the structure and "tone" stays within the PG classification – avoiding any further additional voices that may increase the impact of the program.

That single voice narrates some of the events which the ACMA notes in its classification concerns – e.g. reports of rape in war, of a retreating German mother who can no longer carry the body of her daughter and buries her in the snow along with other children who have also perished in the harsh winter of 1944. That is done without any graphic imagery. Sometimes the voice is accompanied by nothing more than the imagery of an empty road, albeit with the remnants of abandoned war machinery along parts of it. Sometimes the images are of German civilian women walking towards safety pushing their children and belongings in prams. The letter quoted was written by one of those women to her mother. It is a gentle warning to her mother that she hopes to be able to reach her soon, but when she does, she will be without her child. This is a poignant description of the impact of war on the civilian population. It is the essence of a true rendition of a war, which it would be quite wrong to sanitise.

The ACMA also listed the narration of the "suicide by the Nazi hierarchy and German civilians including images of people who had committed suicide" as part of the "narration describing these events and themes extending throughout the majority of the Program, with only brief interruptions." The segment that covers "the suicides of the Nazi hierarchy and German civilians" comes towards the end of the documentary. The suicides of Hitler and Goebbels are noted and are accompanied by generic shots of Berlin after it had fallen and some home

movie footage of the Goebbels children singing. This is a mild presentation of these gruesome final events.

Shortly afterwards, three images of the corpses of individual German civilians accompany a narration which explains that thousands of German civilians choose to take their own lives as Berlin fell. Again, none of the images used show any cause of death, or detail of injury, all the bodies are clothed or covered. Making this a discreet rendering of the subject matter. The fate of the defeated armies and civilian populations is an integral part of the proper portrayal of World War Two as is the fate of the Nazi's victims.

Hitler's Last Year does not flinch from the key events of those horrendous twelve months in 1945. All of these events were discreetly rendered and remained low in impact. SBS does not agree with the ACMA that the footage as broadcast or the treatment of themes exceeded PG.

The footage relates to the subject material. It is essential that the documentary capture the searing events of 1945 in a realistic manner. SBS considers that it would be inappropriate to tone down or "clean up" the documentary to make it more palatable, or to reduce the impact upon the viewer. Nor would it be appropriate to edit or revise the program to take it to a point that might be "comfortable" for children or not distress them too much. This is not a G- rated program and nor should it be.

The intended audience of this documentary is not young children. This program was broadcast during a long running timeslot dedicated to serious history documentaries of considerable community importance. *Hitler's Last Year* is a high-quality production which uses verifiable material taken during 1944 and 1945.

As the number of Neo Nazis and Holocaust deniers increase, SBS considers it vital to support increased efforts to educate potentially vulnerable school students about the real story of the Nazis and the Holocaust. That cannot be done by a revisionist version that fails to show reality. Historical veracity requires the discreet rendition of some victims and some deaths as was done in this documentary. [...]

Comments in relation to parental guidance

There are numerous texts and films widely consumed by older children that deal with confronting themes, Grimm's *Fairy Tales*, *Scary Stories to Tell in Dark*, Roald Dahl's *The Witches*, and the *Harry Potter* stories. Children are not so vulnerable that their parents are not able to protect them from the material in this documentary that is taught as part of school history courses. The documentary is called *Hitler's Last Year*, is rated PG, and carries additional distressing content advice. Parents reasonably may expect the nature of the content contained in the program. *Hitler's Last Year* is not a subtle title about an obscure person.

It is incorrect to suggest the topic and themes are acceptable, but the accompanying restrained imagery is not. The ACMA's preliminary finding, if implemented, would require SBS to delete some of the most seminal images of WW2 or to edit images to remove their emotional power to the point of blandness. SBS considers such a result would create a false and dangerous implication that Hitler and the Nazis were really not that bad.

Context is all in the application of code 4.6. Literally applied the classification requirement in Code 4.6 that PG material will not be disturbing to children would preclude the application of a PG classification to a film showing the death of Lassie.

The onus in PG is squarely on parents and guardians to exercise care and monitor material that children are watching - in the same way parents may provide considered permission for

their school aged children to visit the Sydney Jewish Museum, where comparable visual material is on public display.

War is altogether different from fictionalised drama or tragedy, or some new conspiracy theory being touted on social media. The findings of a credible nationwide survey in the US released last year found that a quarter of millennial and Gen Z adults aged between 18 and 30 in the US believed that the Holocaust was a myth or had been exaggerated or they weren't sure. Almost half of the people surveyed had seen Holocaust denial or distortion posts on social media.⁶ This is the misinformation that *Hitler's Last Year* seeks to address. SBS provided a factual and realistic view of these events to give young Australians a proper basis on which to dismiss the disinformation they are likely to encounter on social media.

In January this year, the Federal Government announced the establishment of the Canberra Holocaust Museum and Education Centre, providing seeding funding to an institution which will have similar extensive programming designed for school aged children covering this historical period.

Conclusion

SBS considers that *Hitler's Last Year* complies with the provisions of Code 4.6. SBS acted reasonably and responsibly in its broadcasting of this important historical documentary as a PG program with advice of 'This program includes content that may distress' on 20 March 2021.

SBS's principal function is to provide multilingual and multicultural broadcasting and digital media services that inform, educate, and entertain (s6, *Special Broadcasting Service Act*). That is a more stringent duty than caught in the comment that:

In the context of a documentary about the final year of World War II, it is to be expected that distressing themes will be explored. The intention to educate and, to some degree, cause distress to the audience has merit and is entirely appropriate.

However, the ACMA does not agree with the SBS's submission that the need to educate people, including young people, about the horrors of WWII, permits the inclusion, under a PG classification, of the footage as broadcast.

This is a crucial historical documentary about a difficult subject – which SBS has a duty to broadcast and must be re-told. Any further reduction of this footage, or the reduction of the narrative would sanitise this material and create a false and irresponsibly comfortable rendition of war and the Holocaust. The Director General of ASIO and The Prime Minister urge that the true story of Hitler's monstrous reign and the genocide of the Jews be retold with some urgency to combat the spread of race-based hatred in the Australian community.

SBS's broadcast of the program is consistent with junior high school curriculums across most Australian states, which considers that comparable material is appropriate for Australian children under the guidance of either their parents or their teachers.

Hitler's Last Year introduces potential new young audiences to a realistic account of this monstrous period in modern history. High school students under the age of fifteen may be shocked, they may be uncomfortable, they may even be distressed but they would have had an accurate introduction into the reality of war and genocide. As General Eisenhower is quoted as saying in the program "I've never had such a shock in my entire life". [...]

⁶ <https://www.theguardian.com/world/2020/sep/16/holocaust-us-adults-study>

Attachment C

Relevant Codes provisions and the ACMA's approach to assessing content

Relevant provisions in the Codes

4. Television Classification

4.1 Introduction

[...]

The guiding principle in the application of the following classifications is context. What is inappropriate and unacceptable in one context may be appropriate and acceptable in another. Factors to be taken into account include: the artistic or educational merit of the production, the purpose of a sequence, the tone, the camera work, the intensity and relevance of the material, the treatment, and the intended audience. SBS believes that the integrity of programs is best retained if programs are broadcast unaltered. However, SBS will schedule programs or, if necessary, modify them in accordance with the SBS classification categories (see 4.6) to ensure that they are suitable for broadcast, or for broadcast at particular times. SBS's classification system gives special attention to culture, levels of violence, sex and nudity, and use of language.

[...]

4.3 Violence

SBS recognises that for some people, particularly children, the portrayal of physical and psychological violence has a unique potential to distress and disturb. Accordingly, it is SBS policy not to present violence gratuitously. In assessing program content involving violence, consideration is given to numerous factors including context, degree of explicitness, significance in relation to the message and social importance. SBS believes that violence should not be presented in such a manner as to glamorise it or make it attractive. It is important when violence is portrayed that, as a rule, its serious consequences are not glossed over. Where violence is presented, SBS will, where appropriate, broadcast an advance warning to viewers. [...]

4.6 Classification categories

[...]

PG – Parental Guidance (*Parental guidance recommended for people under 15 years*)

PG programs may be shown at any time.

PG programs may contain adult themes and concepts which, when viewed by those under 15 years, may require the guidance of an adult.

The PG classification signals to parents that material in this category contains depictions or references which could be confusing or upsetting to children without adult guidance. Material classified PG will not be harmful or disturbing to children.

Parents may choose to monitor the material for their children. Some may choose to watch the material with their children. Others might find it sufficient to be accessible during or after the viewing to discuss the content.

Themes: The treatment of themes should be discreet and mild in impact. More disturbing themes are not generally dealt with at PG level. Supernatural or mild horror themes may be included.

Violence: Violence may be discreetly implied or stylised and should also:

- be mild in impact, and
- not be shown in detail.

[...]

4.7 Classification symbols

The classification symbol of the PG, M or MA15+ program being shown will be displayed at the start of the program.

4.8 Consumer advice

Prominent and legible advice on the principal reasons for an M and MA15+ classification will be given at the start of the program.

SBS may provide other appropriate consumer advice at the start of a program. In particular, SBS will provide appropriate consumer advice at the start of a PG classified program where SBS considers that the program contains material of a strength or intensity which SBS reasonably believes parents or guardians of young children may not expect.

The ACMA's approach to assessing content

The ordinary reasonable viewer

When assessing content, the ACMA considers the meaning conveyed by the material, including the natural, ordinary meaning of the language, context, tenor, tone, images and any inferences that may be drawn. This is assessed according to the understanding of an 'ordinary reasonable' viewer.

Australian courts have considered an 'ordinary reasonable' viewer to be:

A person of fair average intelligence, who is neither perverse, nor morbid or suspicious of mind, nor avid for scandal. That person does not live in an ivory tower, but can and does read between the lines in the light of that person's general knowledge and experience of worldly affairs.⁷

Once the ACMA has ascertained the meaning of the material that was broadcast, it then assesses compliance with the Codes.

⁷ *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167.