



Investigation Report No. 2021

File no.	ACMA2008/1264
Licensee	Channel Nine South Australia Pty Ltd
Station	NWS
Type of service	Commercial Broadcasting Service (Television)
Name of program	<i>Kitchen Nightmares – Secret Garden</i>
Date/s of broadcast	6 March 2008
Relevant legislation/code	<i>Broadcasting Services Act 1992</i> , section 148 Commercial Television Industry Code of Practice 2004: <ul style="list-style-type: none">• Clause 2.4 (Classification of Other Material)• Clause 4.3 (M Classification – Language) of Appendix 4 (Television Classification Guidelines)

Finding

The program *Kitchen Nightmares – Secret Garden* broadcast by Channel Nine South Australia Pty Ltd on 6 March 2008 contained:

- two instances of very coarse language in the scene at approximately 41.00 minutes (and repeated after a commercial break);
- several instances of very aggressive coarse language in the scene at approximately 41.00 minutes (and repeated after a commercial break); and
- frequent use of coarse language which was not *particularly* important to the storyline or program context.

Therefore the licensee incorrectly classified the program M according to clause 4.3 of the Television Classification Guidelines set out at Appendix 4 of the Commercial Television Industry Code of Practice 2004 (the Code), and breached clause 2.4 of the Code in relation to this broadcast.

The complaint

The Australian Communications and Media Authority (ACMA) received a written complaint about an episode of *Kitchen Nightmares* broadcast on 6 March 2008. The complainant alleged that the M-classified program contained offensive coarse language. Not satisfied with the written response provided by the licensee, the complainant forwarded the matter to ACMA for investigation.

The program

Kitchen Nightmares is a reality television program in which the host, celebrity chef Gordon Ramsay, attempts to rehabilitate failing restaurants. This episode concerns Ramsay's attempt to save The Secret Garden restaurant and his clashes with Michel, the chef/owner. The program was broadcast at 9.30 pm. It was classified M and was preceded by a consumer advice warning which stated that the program contained: 'Frequent Very Coarse Language'.

Assessment

The assessment is based on a copy of the relevant broadcast, provided to ACMA by the licensee and submissions from the complainant, the licensee and the Nine Network.

The *Broadcasting Services Act 1992* (the BSA) requires the commercial television industry to develop codes of practice relating to programming matters, including classification of material and specification of time zones in which material classified other than G can be broadcast. In relation to these matters the Code:

- Reproduces guidelines made under the Classification Act for the classification of films, and also contains the Television Classification Guidelines which apply to material other than films and news and current affairs programs.
- Requires broadcasters to supply consumer advice on certain material. Consumer advice gives viewers information about particular classifiable elements that have contributed to a program's classification and intends to assist viewers in making informed choices about the type of programming that is suitable for them and their families to watch.
- Proscribes the broadcast of certain types of material under any circumstances.

As the program was classified M, the Code requires that it be classified in accordance with clause 4 of the Television Classification Guidelines set out in Appendix 4 of the Code.

Relevant provisions

The Code contains the following provisions that are relevant in the matters raised by the complainant:

SECTION 2: CLASSIFICATION

...

Classification of Other Material

2.4 **All other material for broadcast:** Subject to Clauses 2.3 and 2.4.1, all other material for broadcast must be classified according to the Television Classification Guidelines (set out in Appendix 4) or, where applicable, the stricter requirements of Section 3: Program Promotions and Section 6: Classification and Placement of Commercials.

...

Appendix 4: Television Classification Guidelines

The Mature (M) Classification

4. Material classified M is recommended for viewing only by persons aged 15 years or over because of the matter it contains, or of the way this matter is treated.

4.3 Language: The use of coarse language must be appropriate to the story line or program context, infrequent and must not be very aggressive. It may be used more than infrequently only in certain justifiable circumstances when it is particularly important to the story line or program context.

Complainant's submissions

The complainant expressed concern about the strength and frequency of coarse language contained in the program, stating that, "the majority of the show Gordon [was]... constantly swearing aggressively at the Chef (using the f... & c... words!!!)".

Licensee's submissions

Channel Nine South Australia Pty Ltd (a division of WIN Corporation), the licensee of NWS, broadcasts Nine Network Australia programs in accordance with a program supply agreement with the Nine Network, and as a consequence relies on the Nine Network for classification advice. Channel Nine South Australia and the Nine Network have both made submissions in relation to the broadcast of this program.

WIN's submission of 13 May 2008 states that:

NWS relies on the expertise and skills of the Nine Network Chief Classification Officer and Programmer to classify and schedule the program in accordance with the Code.

Our response to the complainant and the Nine Network's response to this investigation accepts that the broadcast of the "c..." word is unacceptable to them as it is to NWS as the licensee.

We categorically confirm that had we been informed of the existence of the word within the program that we would have taken steps to beep it out.

In relation to the use of Gordon Ramsay's language within the program, it is contended that Ramsay's behaviour and language is part and parcel of the restaurant kitchen culture, it is a high-pressure environment and the kitchen is under immense pressure to cook and serve food to the satisfaction and enjoyment of customers...

WIN reiterated this position in its 11 July 2008 response to ACMA's preliminary report.

The Nine Network's submission of 14 May 2008 states:

The Nine Network accepts that the Program as broadcast would have more appropriately been classified MA due to the inclusion of the additional coarse word "cunt".

...

While we accept the use of the aforementioned word was not appropriate for the M Classification, the Nine Network strongly contends that the M Classification guidelines do provide for the inclusion of other frequent coarse language in certain justifiable circumstances. The Nine Network maintains that the Program meets this criterion. The Nine Network believes that the Program could have been accommodated within the M Classification but for the use of the aforementioned word.

In the original classification of the Program, the Nine Network was guided by the Office of Film and Literature Classification [now Classification Board] which has previously classified the episode M under its Guidelines for the Classification of Films and Computer Games.¹

The Nine Network's submission in relation to this program also refers to the Nine Network's response of 14 May 2008 to ACMA's investigation of the program *Ramsay's Kitchen Nightmares – Rococo* broadcast by VTV on 13 March 2008, for a more detailed justification of the use of coarse language. This submission states:

The very reason for the show is to expose a 'warts and all' portrait of just what goes on in the restaurant business, especially one that needs the Host's attention. The language use is therefore justified by the context of the Program as it is a real life portrayal of [a] restaurant kitchen.

...

... each episode of the series was classified M under the Code including the Program, however several edits to the entire series and the Program were made to accommodate the Code's classification guidelines.

...

[W]hile the program does feature the use of one coarse word ('fuck' and its variations) and from time to time its use may be frequent, the Host does not use a large amount of coarse language. In the program, the Host uses this one word in many contexts but he never uses it in the sexual sense and rarely uses it in an aggressive manner. Instead, the Host uses the word as part of his ordinary vernacular to convey a range of emotions... In this context... the Host's language illustrates the strength of his reaction to a particular event and therefore helps draw the audience in to the real life drama they are witnessing. On this basis... the language use is justified by the program context.

The Host is careful to not use coarse language in a setting in which minors or other vulnerable people are present.

...

¹ On 16 June 2008 a DVD containing the *Secret Garden* episode was classified MA15+ with the consumer advice 'Strong Coarse Language' by the Classification Board.

[T]he Host's language necessarily reflects that used in kitchens all over the world and is therefore integral to the accurate portrayal of the restaurant kitchens it critiques and by corollary is extremely "important to the storyline or program context"

In response to ACMA's preliminary finding that the program contained very aggressive coarse language, the Nine Network submitted on 11 July 2008 that:

[T]he ACMA interpretation of the restriction on very aggressive coarse language is at odds with the practical meaning of the clause. The provisions of [clause] 4.3 of Appendix 4 [of the Code] provide that coarse language "must not be very aggressive". The word 'aggressive', as normally understood in classification context is defined as including inherent threats of menace or violence....[T]o tell some one [sic] "It's your fucking kitchen, clean it, you lazy c***" may be abrasive, rude, and offensive it is not very aggressive within the meaning of clause 4.3.

...

Coarse language that is not aggressive (even though it may be offensive) should be separated from [sic] aggressive behaviour and cannot be found to be in breach of the aggressive language restriction.

And in response to ACMA's preliminary finding that the program also contained frequent coarse language that is not particularly important to the story line or program context, the Nine Network submitted that:

The program provides a clear and non-censored view of a working kitchen in a reality show context as opposed to a dramatic one....Nine maintains that to beep or cut the language would undermine the authentic nature of the piece and as such the language use is essential to the program's context and is "particularly important" within the meaning of clause 4.3 [of Appendix 4 of the Code].

...

Nine maintains that the circumstances of the program clearly do justify more frequent language as the language is not only particularly important to the program but, in fact, an essential part of it.

...

[I]t is important to consider that the program contained over 6,300 spoken words. Further, the program contained six breaks featuring news and commercials bringing the total word count to over 8,350 for the 60 minute period. Nine notes that this amounts to less than 1% of all words spoken in the program and in that regard believes that the language could be accommodated within the M classification.

Finding

The program *Kitchen Nightmares – Secret Garden* broadcast by Channel Nine South Australia Pty Ltd on 6 March 2008 contains:

- two instances of very coarse language in the scene at approximately 41.00 minutes (and repeated after a commercial break);
- several instances of very aggressive coarse language in the scene at approximately 41.00 minutes (and repeated after a commercial break); and

- frequent use of coarse language which was not *particularly* important to the storyline or program context.

Therefore the licensee incorrectly classified the program M according to clause 4.3 of the Television Classification Guidelines set out at Appendix 4 of the Code, and breached clause 2.4 of the Code in relation to this broadcast.

Reasons

The code establishes a scale for the use of coarse language that is permissible at each classification, ranging from very mild coarse language, which is permissible in G-classified programs in certain circumstances, to very coarse language, which is permissible in MA-classified programs when appropriate to the story line or program context and not overly frequent or impactful. As noted above, the guidelines for M-classified programs only permit the use of coarse language that is:

- appropriate to the storyline or program context,
- infrequent, and
- not very aggressive.

Such language ‘may be used more than infrequently only in certain justifiable circumstances, when it is *particularly important* to the storyline or program context’ (emphasis added).

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

The word ‘cunt’ is considered very coarse language for the purpose of classifying television programs. The M classification guidelines do not allow for the use of very coarse language under any circumstances. It is therefore considered that the use of this language breaches the Code. The licensee and the Nine Network have both acknowledged that the program was incorrectly classified for this reason.

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

The Nine Network has argued that some 45 instances of ‘fuck language’ amount to less than 1 per cent of words spoken over the 60 minute program (including time occupied by news and commercial breaks), and is therefore infrequent. This argument is inconsistent with the program’s consumer advice of ‘Frequent Very Coarse Language’. Furthermore, it is not considered that such an approach to assessing the frequency of coarse language is appropriate in ensuring conformity with community views. ACMA finds that the program contained frequent coarse language.

The Nine Network has argued that the program context is a 'real life portrayal of a restaurant kitchen' where the language reflects how the kitchen workers speak in the real world. The program context could also be characterised as a reality television program which depicts the rehabilitation of a failing restaurant through changes to its menu and interior design, under the guidance of a successful chef and restaurateur. It is not considered that such frequent coarse language is *particularly* important to the program context under either of these interpretations.

It is noted that almost all of the coarse language in the program is used by the host, Gordon Ramsay. While Ramsay's use of coarse language is purportedly a significant aspect of his personality, it is not considered that the propensity of a character to use coarse language is of itself *particularly* important to a program's story line or context.

The Nine Network has argued that Ramsay's language 'helps draw the audience in to the real life drama they are witnessing'. While this claim addresses the alleged effect of Ramsay's language, and coarse language is one manifestation of Ramsay's exasperation with the chef, the claim does not demonstrate that the language is *particularly* important to the story line or program context. If taken to their limits, the inclination of a character to use coarse language, the unique nature of a particular working environment, or other characteristics of 'real life' situations may otherwise justify any amount of such language in an M-classified program. It is considered that the characteristics of some personalities, environments and situations are such that they are unlikely to be able to be successfully portrayed in an M-classified program, and for this reason the Television Classification Guidelines provide a higher classification for material that is of higher impact.

Furthermore, while coarse language may be used more than infrequently in certain justifiable circumstances, it must not be very aggressive under any circumstances. In the above scene at approximately 41.00 minutes, Ramsay stands close to the chef, gesticulating in his face while shouting at him, and the two use coarse language several times, as they argue heatedly. The Nine Network has argued that coarse language must carry inherent threats of menace or violence if it is to be regarded as aggressive. However aggressive language can also be characterised by the forceful and vigorous tone and manner in which the language is conveyed. In this scene, Ramsay is on the offensive and forcefully conveys his disgust by using very coarse language ('cunt') and shouting and gesticulating at the chef. Therefore it is considered that the coarse language in this scene is used very aggressively, and cannot be accommodated in an M-classified program.

In relation to the submission made by the Nine Network that other programs containing similar levels of coarse language were classified M by the Classification Board, it is noted that the Classification Board's Guidelines for the Classification of Films and Computer Games state that, in relation to programs classified M, 'Coarse language may be used. Aggressive or strong coarse language should be infrequent and justified by context.'² However, the Code requires that programs other than films

² Available at [http://www.comlaw.gov.au/ComLaw/legislation/legislativeinstrumentcompilation1.nsf/0/F0EC030A108C93DDCA2574120004F6B8/\\$file/FCGGuidelines2005.pdf](http://www.comlaw.gov.au/ComLaw/legislation/legislativeinstrumentcompilation1.nsf/0/F0EC030A108C93DDCA2574120004F6B8/$file/FCGGuidelines2005.pdf).

broadcast on commercial television must be classified according to the Television Classification Guidelines set out in Appendix 4 of the Code, which contain different requirements. For M-classified programs, these requirements include restrictions on the circumstances under which coarse language may be used, its frequency and its tone. It is also noted that on 16 June 2008 the Classification Board classified a DVD containing the *Kitchen Nightmares - Secret Garden* program MA15+, with the consumer advice, 'Strong coarse language.'³

³ According to the Classification Board's classification database available at <http://www.classification.gov.au>, searched by ACMA on 19 June 2008.

Decision

The Australian Communications and Media Authority determines for the above reasons that Channel Nine South Australia Pty Ltd, licensee of NWS, in relation to the broadcast of *Kitchen Nightmares – Secret Garden* on 6 March 2008:

- breached clause 4.3 (M Classification – Language) of Appendix 4 of the Commercial Television Industry Code of Practice (July 2004); and
- breached clause 2.4 (Classification of Other Material) of the Commercial Television Industry Code of Practice (July 2004).

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

Signature of Member

Signature of

Name

Name

Dated August 2008