Investigation report no. BI-406

| Summary |  |
| --- | --- |
| **Licensee** | Queensland Television Ltd. |
| **Station** | Nine |
| **Type of service** | Commercial—television |
| **Broadcast** | Program promotion for *Love Island Australia­* |
| **Date of broadcast** | 24 April 2018 |
| **Relevant code** | Commercial Television Industry Code of Practice 2015 |
| **Date finalised** | 6 July 2018 |
| **Decision** | No breach of clause 2.1.1 [classification] |

Background

In June 2018, the Australian Communications and Media Authority (the ACMA) commenced an investigation under section 170 of the *Broadcasting Services Act 1992* (the BSA) into a program promotion for the reality television dating program *Love Island Australia* (the promotion).

The promotion was broadcast on Nine by Queensland Television Ltd. (the licensee) on Tuesday, 24 April 2018 at 8.42 pm.

The ACMA received a complaint alleging the promotion was sexually suggestive and inappropriate for broadcast during the reality television singing program, *The Voice*.

The ACMA has investigated the licensee’s compliance with clause 2.1.1 of the Commercial Television Industry Code of Practice 2015 (the Code).

The promotion

*Love Island Australia* is a reality television dating program, classified MA15+ and described on the Nine website as:

Hearts will be pounding and pulses will be racing as the UK's most talked about TV show gets an Australian edition exclusively for 9Go! and 9Now.[[1]](#footnote-1)

The promotion featured Australian celebrity, Sophie Monk, and a group of adult males and females who board an aeroplane from Australia to Spain, flying from winter to summer. The individuals were shown undressing on the aeroplane to reveal their swimwear. After landing in Spain, some couples were shown dancing together by the beach, in their swimwear. The promotion included voice-overs and text displayed on screen, accompanied by sound effects and music.

The promotion was broadcast during the PG classified reality television singing program, *The Voice*, and was approximately one minute long.

A transcript of the video and audio in the promotion is at **Attachment A**.

Assessment and submissions

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.[[2]](#footnote-2)

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

This investigation has taken into account the complaint (extracts at **Attachment B**) and submissions from the licensee (extracts at **Attachment C**). Other sources are identified in this report where relevant.

Issue: Classification

Relevant Code provisions

2. Classification and Proscribed Material

*2.1 Classification – General rules*

2.1.1 Subject to the exceptions in section 2.3, all Programs and non-Program material (including Program Promotions) must be:

a) classified in accordance with the criteria set out at Appendix 1; and

b) broadcast in accordance with the classification zones set out at section 2.2.

*Note: For example, a Program Promotion for a Program which is classified M may be broadcast in a PG classification zone, provided that the content of the Program Promotion is classified PG (unless the Special care rules at section 2.4 apply).*

[…]

***2.2 Classification zones***

2.2.1 **PG Classification zone.** Material that has been classified C, P, G or PG may be broadcast at any time.

[…]

***2.4 Special care requirements for non-Program material***

2.4.1 Subject to clause 2.3.4, between the hours of:

a) 5.00 am and 6.00 am; and

b) 7.30 pm and 8.30 pm,

all non-Program material broadcast during Sports Programs, or Programs classified G or PG, must be no higher than a PG classification.

[…]

2.4.4 A Program Promotion for a Program classified M or MA15+ must not be broadcast during any Program classified G:

a) which is principally directed to Children; and

b) broadcast between 5.00 am and 8.30 pm;

unless the Program Promotion is for the next scheduled Program.

**Appendix 1: Television Classification Guidelines**

[…]

*Using these guidelines: essential principles*

The suitability of material for broadcast will depend on the context, frequency and intensity of key elements such as violence, sexual behaviour, nudity and coarse language, and on the time of day at which it is broadcast. It will also depend on such factors as the merit of the production, the purpose of a sequence, the tone, the camera work, the relevance of the material, and the treatment; be it dramatic, comedic or documentary.

These factors must be all taken into account and carefully weighed. This means that some actions, depictions, themes, subject matter, treatments or language may meet current community standards of acceptability in one Program, but in another Program may require a higher classification, or be unsuitable for television. In other circumstances sequences that clearly depict comedy or slapstick behaviour may reduce the classification.

[…]

**The Parental Guidance Recommended (PG) Classification**

Material classified PG may contain adult themes or concepts but must be mild in impact and remain suitable for children to watch with supervision. All elements must be justified by context.

[…]

***Sex***:Depictions of and verbal reference to sexual activity must be restrained.

***Nudity***:Restrained depictions of nudity are permitted.

Finding

The licensee did not breach clause 2.1.1 of the Code.

Reasons

Clause 2.1.1 requires that, subject to limited exceptions, all programs and non-program material, such as program promotions, must be (a) classified in accordance with the criteria set out at Appendix 1 of the Code and (b) broadcast within the time zones specified in section 2.2.

The complaint to the ACMA stated:

This commercial contains very suggestive interaction between adults after they have stripped off and are dancing on a beach. One bikini is essentially a g-string. The men are touching women provocatively. My two ten year olds complained to me as well as my 12 year old. The advertisements were screened during 'The Voice', which is a PG rating and should be suitable for viewing by my children. They were on at various times between 8pm and 9pm (and after 9) where there are likely to be children viewing. My children - and I - have no wish to see individuals in sexually suggestive scenarios as depicted in this advertisement.

The licensee submitted to the ACMA:

In this case, the promotion was properly classified PG, and was then placed into a program that was also PG rated and at a time that permits PG material.

[…]

The Code does in fact permit a PG promotion to be scheduled in a PG program such as *The Voice. The Voice* is neither a G rated program, nor principally directed to children (noting that the average audience aged 0-15 for *The Voice* is 12.7%), and in this case, there has been no breach of that provision and the promotion was scheduled during *The Voice* in accordance with what is currently permitted under the Code.

**Does the content in the promotion meet the PG classification criteria?**

Appendix 1 of the Code provides that material classified PG may contain adult themes or concepts but must be mild in impact and remain suitable for children to watch with supervision. All elements must be justified by context.

Adult themes or concepts

The promotion included adult themes in the form of adult relationships. The promotion indicated to viewers that the premise of *Love Island Australia* is that singles will spend time together in a Spanish villa and try to form relationships with each other.

The ACMA accepts the licensee’s submission that:

These relationships are only briefly referred to verbally (buckle up and couple up), and only tangentially depicted in group shots where the contestants are seen in pairs.

The ACMA considers that the promotion’s treatment of adult relationships was mild in impact and remained suitable for children to watch with supervision.

Sex

The promotion had a sexually suggestive and playful tone, which appears to be in keeping with the nature of the program it promoted.

The promotion included references to sexualised behaviour in the form of sexual innuendo and/or double entendres. The promotion included the use of verbal terms such as ‘six steamy weeks’, ‘buckle-up and couple-up’ and ‘sexy singles’. These references were accompanied by depictions of couples touching hands, embracing and dancing closely together in their swimwear.

The promotion included two brief depictions of adult couples dancing in an overtly sexualised manner. The scenes appeared towards the end of the promotion and feature medium long-shots of male and female couples dancing in their swimwear. The males had their hands positioned either side of their partner’s waists as they sway side-to-side. The females had their arms behind their partner’s neck. No nudity or close-up depictions of bodily contact were included.

The ACMA accepts the licensee’s submission that:

Any reference to sex is implied, rather than direct – and open to interpretation.

[…]

At no point is there any kissing between the contestants, or any prelude to any sexual act.

The depictions and references to sex were implied, restrained and justified by the context, which is the promotion of a program about adult singles looking to form relationships. The impact of the depictions and references was no greater than mild.

Nudity

The promotion included sexualised depictions of adults undressing; however, all were wearing swimwear underneath their clothing.

The promotion included adult males in swimming briefs and board shorts. The promotion also included brief depictions of female breast cleavage and some partial buttock detail within the context of bikini-style swimwear.

The ACMA accepts the licensee’s response to the complainant that the change in clothing to swimwear is in keeping with the tropical location of *Love Island Australia*:

We note the promotion included no explicit sexual language nor did it include any nudity. The promotion included vision of men and women changing clothes to reveal their swim wear underneath, and then stepping off a stylized plane onto a beach, as the location of the Program is set in a tropical paradise.

[…]

The contestants are depicted in bikinis and swimwear, but this is justified by the context being that they are stepping off a plane onto an island resort.

[…]

It is clear from the concluding scenes in the promotion that the contestants will be spending a considerable amount of time in their swimwear at the Spanish island, and their attire is in keeping with the setting and occasion of the Program.

The ACMA also accepts the licensee’s submission that:

The PG classification does, in any event, allow for depictions of nudity, provided it is restrained and justified by context.

To the extent that the depictions referred to above could be considered nudity, their impact was no greater than mild. All classifiable material was justified by the context.

The ACMA notes that the frequency and intensity of the classifiable elements throughout the promotion may affect the cumulative impact of the promotion. The promotion included a series of depictions of adults undressing or appearing in their swimwear. Accompanied by the sexual references discussed above, this heightened the impact of the promotion. However, the impact did not exceed mild.

The ACMA considers that the promotion was classified in accordance with the PG classification requirements at Appendix 1 of the Code.

Accordingly, the licensee did not breach subclause 2.1.1(a).

**Was the promotion broadcast in the appropriate classification zone?**

Subclause 2.1.1(b) of the Code states that material must be broadcast in accordance with the classification zones set out in section 2.2. Clause 2.2.1 of the Code states that PG classified material may be broadcast at any time (subject to some exceptions in section 2.3 of the Code, which do not apply in this case).

As the ACMA considers the promotion was appropriately assessed as a PG classified promotion, its broadcast complied with the Code classification zone requirements in section 2.2.

Accordingly, the licensee did not breach subclause 2.1.1(b).

**Note regarding special care requirements for non-Program material**

The complainant expressed concerns regarding the exposure of young children to the promotion.

The ACMA notes that the special care requirements at clauses 2.4.1 and 2.4.4 of the Code address community concerns about the exposure of children to inappropriate content. However, in this case, neither clause applies.

Subclause 2.4.1(b) ensures non-program material broadcast at certain times will be no higher than a PG classification. Although the relevant times do not apply in this case (being between 7.30 pm and 8.30 pm), the ACMA notes the promotion was nevertheless classified PG. Clause 2.4.4 of the Code concerns the broadcast of certain program promotions during G classified programs that are principally directed to children. The ACMA accepts that *The Voice* was likely to appeal to a wide audience, including children. However, it was not a program that was principally directed to children; it was also classified PG. Therefore, the special care provisions at clause 2.4.4 of the Code do not apply.

Attachment A

Transcript of video and audio in the program promotion for *Love Island Australia* broadcast on Nine on 24 April 2018 at 8.42 pm

| TIME | ON SCREEN VISUAL | AUDIO | ON SCREEN TEXT |
| --- | --- | --- | --- |
| 0.00 | An adult female in high-heeled shoes walks across a wet tarmac towards a waiting aeroplane. Close-up shot, from the rear.  Side view as she walks up the stairs and into the aeroplane, with the open door automatically closing behind her. [Parts of this footage is sped-up] | MALE VOICE-OVER:  Australia, it’s going to be cold, wet and windy out there.  SOUND EFFECT:  Thunderstorm. | ‘Go!’ logo  [presented until the 0:58 minute mark at the bottom right-hand corner of the screen]  ‘MA15+’ classification marking logo  [presented for approximately 4 seconds at the bottom right-hand corner of the screen next to the ‘Go!’ logo] |
| 0:04 | Close-up of Sophie Monk seated in the pilot’s chair of the aeroplane, wearing a pilot’s hat and sunglasses.  She removes her sunglasses as she faces the camera. | MALE VOICE-OVER:  It’s time to rug up. Winter’s coming. |  |
| 0:06 | Long-shot of an adult male fire fighter in his work uniform.  He answers his mobile phone while standing inside a fire station.  A fire truck and another fire fighter appear in the background. | BACKGROUND MUSIC STARTS – DANCE/POP STYLE TUNE –Plays throughout.  SOPHIE MONK:  Hey babe.  ADULT MALE FIREFIGHTER:  Hey. |  |
| 0:09 | SPLIT SCREEN - TWO WAYS:  Fire fighter and Sophie Monk use their mobile phones simultaneously. | SOPHIE MONK:  Six weeks in the sun. You up for it? |  |
| 0:10 | Adult female in a white bikini, at a photo-shoot, walks towards the camera while holding a mobile phone against her ear. | ADULT FEMALE:  Hey, I’m on my way. |  |
| 0:12 | Shirtless adult male places a white towel around his waist while looking at his reflection in the mirror.  An adult female wearing lingerie is seated on a couch behind him.  He answers the call, by placing the mobile phone against his ear. | SOUND EFFECT:  Incoming voice call ringtone.  SOPHIE MONK:  Pack your bags handsome. |  |
| 0:16 | Sophie Monk, seated in the cockpit of the aeroplane, holds her pink coloured mobile phone in the palm of her hand.  Extreme close-up of switches being pressed in the cockpit.  Crane shot of the aeroplane, (including a close-up shot of the rotating engine fan) with a group of people walking towards the plane on the tarmac. | SOPHIE MONK:  The engines are running. |  |
| 0:20 | Extreme Close-up of Sophie Monk wearing a pilot’s hat and sunglasses.  The sunglasses include a reflection of Sophie Monk’s legs and her black coloured skirt. | SOUND EFFECT:  Moan/heavy breathing. |  |
| 0:21 | Long shot of a group of people walking towards the camera.  Some people are clothed in items such as scarfs, jackets, long pants and hats.  Lightning strikes in the background. | SOUND EFFECT:  Thunderstorm. |  |
| 0:22 | SPLIT SCREEN- THREE WAYS:  Adult female in black coloured tights and leopard print high-heeled shoes walks up the aeroplane’s stairs and into the aeroplane.  The aeroplane’s open door automatically closes behind her. [Parts of this footage is sped-up]  [Identical image on all split screens] |  |  |
| 0:24 | Medium close-up shot of Sophie Monk seated in pilot’s seat.  Medium close-up shot of a seated adult female passenger who looks out the window.  Close-up shot of a seated adult male passenger, wearing a scarf, removes his sunglasses. | SOPHIE MONK:  Welcome aboard you beautiful sexy singles. |  |
| 0:28 | Extreme close-up of a lever (titled ‘landing gear’) is raised in the cockpit.  A monitor, in the cockpit, includes a depiction of the world map which has a location marked as ‘LOVE ISLAND’ and ‘SPAIN’.  Sophie Monk presses a button or switch in an over-head position in the cockpit (off-screen). | SOPHIE MONK:  Your love life to Spain is about to take off. |  |
| 0:30 | Adult male flight attendant wearing a white singlet raises his hands to demonstrate how to buckle the seat belt. | SOPHIE MONK:  So buckle-up … |  |
| 0:33 | SPLIT SCREEN - TWO WAYS:  An adult male and adult female passenger look towards each other.  Adult male looks to the right.  Adult female looks to the left. | SOPHIE MONK:  …and couple-up. |  |
| 0:35 | Couple touch hands (pinkie fingers touch). | SOPHIE MONK:  ‘Cos we’re heading … |  |
| 0:36 | Sophie Monk presses a switch, rotates a knob and moves a lever in the cockpit. | SOPHIE MONK:  …to the hottest summer of your lives. |  |
| 0:40 | Zoom to external view of the front of aeroplane in flight amongst the clouds. |  |  |
| 0:41 | Medium close-up of a seated adult female passenger who removes a black coloured garment from her upper torso area to reveal a gold coloured dress. | SOPHIE MONK [off camera]:  Six steamy weeks. |  |
| 0:42 | A mid shot of a seated adult male who removes his blue coloured singlet.  Other passengers are also partially visible and appear to be in the process of removing items of clothing too. |  |  |
| 0:43 | Mid shot of an adult female passenger in a bikini top. | SOPHIE MONK [off camera]:  In a luxury Spanish Villa. |  |
| 0:44 | Close-up of an adult female unzipping a tightfitting black coloured outfit. Shot is focused around her upper torso region. |  |  |
| 0:45 | A mid shot of a seated adult male passenger who removes his white business shirt. He is wearing board shorts with a palm tree pattern design on them. | SOPHIE MONK [off camera]:  The perfect place. |  |
| 0:46 | Digital display of a holiday villa on a GPS style screen. The shot includes the text ‘APPROACHING LOVE ISLAND’. |  |  |
| 0:47 | External shot of the aeroplane passing through a cloud shaped like a love heart. | SOPHIE MONK [off camera]:  For your love story to begin. |  |
| 0:50 | Sophie Monk disembarking from the aeroplane. | SOPHIE MONK:  Welcome, |  |
| 0:51 | Brief montage of passengers disembarking from the aeroplane.  The shot is shown from inside the aeroplane, looking outwards towards a beach/water view.  One of the adult females is wearing a blue coloured G-string style bikini bottom. | SOPHIE MONK:  to love island. |  |
| 0:52 | Groups of couples dancing outdoors in their swimwear.  Includes a mid-shot of a couple dancing. The adult male places his hands around the adult female’s waist and the adult female places her arms around his neck. | FEMALE VOICE-OVER:  Get ready. |  |
| 0:54 | Adult male positioned behind an adult female. The adult male has his hands on either side of the adult female’s waist. The adult female has her arms behind the adult male’s neck.  This couple face the camera and sway side-to-side. | FEMALE VOICE-OVER:  For your new love addiction. |  |
| 0:55 | Banner style image is compiled across the entire screen. Graphics include still images of palm trees and an adult male embracing an adult female in his arms as they pose face-to-face. An aeroplane moves in the background and the title of the program. [love island] is presented letter by letter. | FEMALE VOICE-OVER:  Love Island Australia. | Love Island Australia |
| 0:58 – 1:00 |  | FEMALE VOICE-OVER:  Coming to Nine Go and Nine Now. | ‘GO!’ logo  ‘9 Now’ logo  [both presented in the centre of the screen, before a multi-coloured background which resembles a sunset/sunrise] |

Attachment B

Extracts of the complaints to the licensee and the ACMA

***Complaint to the licensee dated 24 April 2018:***

The ads for Love Island on channel 9 occur during The Voice (rated PG). My children are all young children and love The Voice. However all of them are distressed by the undressing and obvious sexualised nature of the Love Island advertisements. These advertisements have occurred every night 22-24 April 2018. Tonight 24/4 approx. 8:45pm, yesterday 23/4 just after 8:00pm. […] The Voice audience includes children; the program is PG. The soft porn nature of the advertising material is offensive to my children and myself especially at such an early hour. I request that the ad not be shown during The Voice.

***Complaint to the ACMA dated 23 May 2018:***

I have complained about the nine network airing of a television promotional advertisement for 'Love Island'. This commercial contains very suggestive interaction between adults after they have stripped off and are dancing on a beach. One bikini is essentially a G-string. The men are touching women provocatively. My two ten year olds complained to me as well as my 12 year old. The advertisements were screened during 'The Voice', which is a PG rating and should be suitable for viewing by my children. They were on at various times between 8pm and 9pm (and after 9) where there are likely to be children viewing. My children- and I- have no wish to see individuals in sexually suggestive scenarios as depicted in this advertisement. The television station's response to me was effectively 'we have reviewed the material and think it is suitable for viewing during a PG timeslot.' I do not. I am therefore referring the matter to the ACMA.

[…]

What I took exception to, and my children voiced their exception before I did (!), was the airing of this blatantly sexual advertisement in the middle of The Voice, which my children watch with considerable devotion. This is a PG program and clearly directed at a family viewing audience.

I take exception to Nine’s offhanded dismissal of my complaint:

We note the Promotion included *no explicit sexual language* nor did it *include any nudity*. The Promotion included vision of men and women changing clothes to reveal their swim wear underneath, and then stepping off a stylized plane onto a beach, as the location of the Program is set in a tropical paradise. We maintain that all elements of the Promotion are suitable for classification at a PG level.

To the contrary:

1. No explicit sexual language. I would ask, is it sufficient to allow material simply because the words do not literally describe a sex act? The voiceover all but tells the audience the show is about sex. Indeed that is part of the design of the show and its concept of ‘couplings’, from what I understand.

It should not be sufficient to avoid the code’s intent simply by avoiding ‘red flag’ terminology in the script. The intonation, of itself, tells the sexual story. To allow this kind of circumvention makes a mockery of the standards set by the code. This is compounded by the accompanying visuals of the promo.

2. No nudity. Nine responds that the people in the advertisements are “changing clothes”. Nine's description is ludicrous. The ad does not maintain this kind of neutral tone. While the characters might not be nude, their progressive nudity together with sexual movement and sexual innuendo-laden voice-over leaves nobody, my ten year olds included, under any mistaken impression. Everyone knows it is about sex. Indeed, Nine’s own documentation of the promo admits that it “sizzles” and is “very sexy indeed" (see below).

Here is a rundown of the ad:

After hearing a weather report telling us it is “time to rug up”, the vision cuts to Monk. She “recruits” people for “6 weeks in the sun”. At one point Monk says “pack your bags, handsome” and vision cuts to a man in nothing but a towel and bare chest. He smiles provocatively. She says “her engines are running”. *Sexual innuendo*.

Her opening lines are “welcome aboard, you *beautiful, sexy singles*”. Sex is then here clearly introduced as the theme. No innuendo needed.

She says “buckle up, and *couple up*”, with the characters looking suggestively at each other. This might not be “explicit sexual language” but what else does ‘couple up’ mean in the tone that Monk says? Should an ad be able to escape sanction simply because they choose not to use the F-word? Even my ten year olds hide their eyes at this.

The advertisement then contains lewd depictions of the people undressing, including a woman unzipping her top to reveal progressively more cleavage at one point, and a man unbuttoning his pants to reveal his underpants. This is done, together with the suggestive voiceover “6 *steamy weeks*”. Again, no innuendo here. Blatant sexual theme.

After the plane lands on the beach, Monk says “welcome to Love Island” and the passengers depart the plane. Amongst these it shows the practically bare buttocks of one female in what is a blue G-string. How on earth is this appropriate for ten year olds?

The party then dances on the beach. The woman in the blue G-string is dancing with a man in green trunks. Both are looking at the male’s groin area. At one point a woman is seen from the front gyrating her hips, with a male necking her from behind, and holding her hips as she suggestively moves. Soft porn. Appropriate for ten year olds?

So, again I ask: no F-bomb here, and no full frontal nudity. Does that allow Nine to flaunt the code in this fashion?

The promo finishes with Monk saying “nice ass”, and vision cuts to a donkey. Clearly the message is you will see a lot of nice asses on this show.

All in all, it is nothing but lewd and titillating soft porn, intended to capture the imagination of those wanting exposure to such scenarios. This tactic has been outrageously successful in the UK. The show’s producers might have the objective of capturing a similar ratings appeal for Australian audiences. That does not make it right to air such suggestive material in the middle of a family show like The Voice.

I refer you to Nine’s own description of this advertisement: <http://www.news.com.au/entertainment/tv/reality-tv/sophie-monk-sizzles-in-love-island-promo/news-story/50bf486fef132f8d5a4029316f4f9d49>

**It says:**

**- (Heading) “Sophie Monk sizzles in ‘Love Island’ promo. Here, clearly, “sizzles” does not relate to barbecues. It relates to sexual titillation.**

**- She is “one heck of a sexy pilot” in the promo**

**- “*If the promo is anything to go by, the program is going to be very sexy indeed*."**

The promo is embedded in the story linked above.

Others have been similarly incensed: <http://www.news.com.au/entertainment/tv/reality-tv/viewers-slam-nines-seedy-love-island-teaser-airing-during-the-voice/news-story/42857bfb916a13bb067b1c3d113db0c8>

I am not a prude. But sex needs to be contained to a properly ‘adult’ viewing time and promos like this scheduled accordingly. Please help me tell my kids that there is a broadcasting authority that takes their legitimate needs into account and protects children.

Attachment C

Licensee’s response and submissions

***Extracts from licensee response to the complainant dated 23 May 2018:***

We understand that you have expressed concerns in relation to the appropriateness of the Promotion, and that it was broadcast during prime time viewing.

At the outset, we would like to apologise for any offence caused to you or your family as a result of the Promotion, as it is certainly not our intention to upset our viewers. Nine takes very seriously its obligations as a broadcaster, and makes every effort to ensure that the material it presents is consistent with community standards, and complies with Nine’s regulatory obligations.

In this regard, material broadcast on television is regulated by the *Commercial Television Industry Code of Practice* 2015 (the **Code**). Your letter raises issues pursuant to the Code, which has a number of relevantrequirements that relate to the broadcast of programs and program promotions, including obligations toclassify program promotions and schedule them in accordance with the applicable classification zonessetting out the times at which material of a certain classification may be shown.

We note in this regard that program promotions are separately classified to the program that they promote, being classified on the basis of the more limited content that has been extracted, and are frequently of a different classification rating. The Promotion the subject of your complaint was classified PG. The Code gives the following guidelines for the PG classification:

*Appendix 1 Material classified PG may contain adult themes or concepts but must be mild in impact and remain suitable for children to watch with supervision. All elements must be justified by context.*

Additionally, the Code has sub clauses for programs classified PG as below:

***Sex:*** *Depictions of and verbal reference to sexual activity must be restrained.*

***Nudity:*** *Restrained depictions of nudity are permitted.*

***Themes:*** *The treatment of social or domestic conflict and psychological themes should be carefully handed. Supernatural or mild horror themes may be included.*

Nine wishes to assure you that all material required to be classified under the Code is carefully reviewed and considered by trained classifiers, and any scheduling of classified material is strictly scheduled in accordance with the permitted time zones in the Code.

Whilst we appreciate your concerns, we have assessed the Promotion against the current classification provisions of the Code and consider the Promotion to be compliant with its provisions. The material included is mild in impact and any references to sexual activity or themes presented in the Promotion were restrained and handled with care.

We note the Promotion included no explicit sexual language nor did it include any nudity. The Promotion included vision of men and women changing clothes to reveal their swim wear underneath, and then stepping off a stylized plane onto a beach, as the location of the Program is set in a tropical paradise. We maintain that all elements of the Promotion are suitable for classification at a PG level.

Additionally, the Promotion was broadcast in a commercial break to *The Voice* which is classified PG, and was scheduled appropriately at a time allowing PG content.

In light of the above there has not been a contravention of the Code requirements in this instance. However, we do take very seriously the concerns you have raised, and we have carefully considered the matters you have expressed in your complaint. Nine wishes to assure you that it does nevertheless consider the composition of its audience in scheduling appropriate material, and in many cases, where it considers content to be inappropriate for a particular timeslot, it will exercise its discretion to schedule it at a different time (notwithstanding that it is permitted under the Code). For this reason, we have raised your concerns regarding the Promotion of *Love Island* with our scheduling and promotions staff so that they can be aware of this issue in the future.

***Extracts from licensee submission to the ACMA dated 20 June 2018:***

1. *Love Island Australia* (**Program**) is a reality-style program featuring young singles looking for love. The Program is hosted by Sophie Monk, and is set on an island in Spain. The Program is classified for a Mature Audience (**MA**) which is a classification rating permitted for broadcast under the Code.
2. The Promotion was separately classified Parental Guidance (PG) according to the content of the Promotion itself as is permitted under clause 2.1.1 of the Code [Reference: See note to clause 2.1.1]. The material included in the Promotion was carefully selected to ensure that it was mild in impact, in line with the Code and containable at the PG classification rating.
3. Nine believes the classification guidelines are to be interpreted from the standpoint of a reasonable and objective viewer. Nine notes the reasoning previously accepted by the ACMA in construing the reasonable and objective viewer in the context of other provisions of the Code, in that a standard must be adopted which reflects the opinions of the objective viewer and not that of the individual or group making the complaint [Reference: Investigation Report 1400]. Accordingly, the test is not whether particular individuals (such as the complainant) believe that certain material exceeds the provisions, but rather on an objective basis if the material can reasonably be held to be of a type not permitted by the relevant Code provision.
4. Australian courts have also considered the standard for an 'ordinary reasonable' person 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" [Reference: Amalgamated Television Services Pty Limited v Marsden (1998) 43 NSWLR 158 at pp 164-167].
5. Nine has observed in a number of cases that promotional content that is scheduled in program breaks has a differing impact on different members of the public. In order to accommodate the variance in audience response, Nine endeavours to schedule material responsibly and carefully, with a view to erring on the side of caution. Where a program deals with mature themes, material for promotion is carefully selected for broadcast, including to ensure that material that exceeds the relevant classification rating for the time slot of the promotion is excised.
6. Nine will also produce a number of different promotions for a program at differing classification levels (including at a more granular level than is ordinarily required under the Code for promotions), in order to enable their respective scheduling at appropriate times. In this case, a number of promotions were produced for the Program which were classified "PG schedule with care", in addition to the ordinary classification categories of PG and M in order to ensure that suitable content of the appropriate level could be scheduled.
7. The promotions that were internally classified "PG schedule with care" were labelled as such, and scheduled with particular care during family programs and family films, and excluded from programs such as The Voice. This is an additional internal protocol adopted by Nine that is not required by the Code, but has been applied by Nine on its own initiative to facilitate the careful scheduling of the promotions during various types of programs across Nine's channels. Similarly, promotions that were classified at the M classification rating were produced, but were not scheduled during The Voice at all, even though in some cases, an M rated promotion may be shown toward the latter stages of The Voice after 8.30pm pursuant to the Code.
8. Whilst Nine may take every precaution to carefully classify material, to ensure impactful material is excised from a promotion, or to schedule with restraint - some members of the public will be aware of the nature of the Program in and of itself. Because of that association, and even though a promotion itself may not contain offending material, the notion of the Program itself may be a cause for offence to some viewers. For this reason, promotional material can often attract complaint vicariously - even if the material included in a promotion viewed in isolation may not be of concern.
9. In a similar way, whilst Nine may diligently ensure that a program promotion is compliant with the classification provisions of the Code based on the content extracted and included in the promotion, the content of promotions can be exacerbated by the program context in which they are viewed. In this case, the complainant has indicated that they viewed the Promotion during The Voice. Seeing the Promotion out of context can provoke a stronger response, than for a viewer who has either chosen to watch the same material during the Program itself in its ordinary context, or viewed the Promotion in isolation. This is nearly always the case to some degree as the intended audience and demographic profile for the program promoted is never a perfect match with the actual audience and demographic profile of the viewership for the program in which a promotion is scheduled. However, it remains important for Nine to be able to promote its slate of programs during programs of broad appeal which cover a wide demographic, including The Voice, even though the program promoted may be intended for a more limited audience demographic.
10. Nine is both aware and mindful of these issues, and goes to considerable effort to ensure that the promotions that are scheduled in commercial breaks are carefully selected for this reason, and scheduled with extreme care. Where considered appropriate, for promotions that Nine anticipates to be affected by these issues (as set out in paragraphs 11 and 12), Nine will ensure that such promotions are scheduled in a limited fashion, and without undue repetition, and in some cases, exercise its discretion to schedule at a different time (even though strictly speaking it may be permitted under the Code).
11. Notwithstanding these measures, Nine believes that the Promotion should be assessed solely in relation to its compliance with clause 2.1.1 of the Code being whether it has been classified appropriately, and then scheduled in accordance with the appropriate classification zone. In this case, the Promotion was properly classified PG, and was then placed into a program that was also PG rated and at a time that permits PG material. The material included in the Promotion should be assessed against the classification guidelines in Appendix 1 of the Code from the standpoint of an ordinary reasonable viewer, and not a person that is "avid for scandal" or already offended by the Program in and of itself.
12. It is worth noting that there are particular provisions of the Code that already deal with placement of promotions for programs classified MA which require those promotions not be broadcast during G classified programs that are principally directed to children and broadcast between 5.00am and 8.30pm. One of the complainant's concerns, as set out in her complaint to the ACMA, is that the Promotion was shown during The Voice. The Code does in fact permit a PG promotion to be scheduled in a PG program such as The Voice. The Voice is neither a G rated program, nor principally directed to children (noting that the average audience aged 0-15 for The Voice is 12.7%), and in this case, there has been no breach of that provision and the Promotion was scheduled during The Voice in accordance with what is currently permitted under the Code.

**Classification of the Promotion**

1. Under the PG classification, material "may contain adult themes or concepts but must be mild in impact and remain suitable for children to watch with supervision. All elements must be justified by context”. The classifiable elements of the PG classification include Violence; Sex; Nudity; Language, Drugs, Suicide and Themes. Whilst Nine does not consider there to be any relevant breaches of the PG classification, the potentially relevant elements are Sex, Nudity and Themes.
2. Love Island Australia is a program featuring young singles. It is not intended to appeal to all audiences, but is aimed at a specific demographic and has been an extremely popular format in other countries. The Promotion is intended to appeal to that audience, and to be a playful, irreverent introduction to the program.
3. The portrayal of the individuals in the Program is designed to be exaggerated and entertaining, thereby provoking discussion (and sometimes humour). Like many other similar programs, the Program is not designed to emulate reality, but is set in unreal circumstances in which a collection of strangers are grouped together and asked to engage in a series of structured activities designed to facilitate interaction. While Nine does not agree that the Promotion includes any material not containable at the PG classification level, Nine maintains that the elements of the Promotion must be taken in this context, and are justified by the nature of the material involved in the Program.
4. The context of the Promotion is similarly irreverent. It involves Sophie Monk, the host of the program, dressed as the pilot of a plane and commences with a weather report for bad weather approaching across the country and vision of people struggling in the rain. Ms Monk contacts the contestants who are depicted going about their ordinary lives (e.g., at their day jobs at a fire station […]), and who then receive the call to have "six weeks in the sun" and join the flight to Love Island. The contestants are then depicted on the plane, getting ready to land on the island paradise, changing from their normal everyday attire into beachwear. The contestants are shown arriving at the island […].
5. By design, the Promotion conveys a sense of caricature and parody. Ms Monk is obviously not a qualified pilot […]. Passengers on a plane do not ordinarily land on a beach, where they immediately step off into an island paradise and party scene. Viewers are given a number of signposts throughout the Promotion indicating that the statements or depictions are tongue in cheek.
6. The PG classification permits adult themes and concepts provided they are mild in impact and remain suitable for children to watch with supervision. Nine maintains that the Promotion is restrained for this purpose, and the classifiable elements of the Promotion are appropriately containable at the PG classification. The Promotion is highly stylised, and does not include any sexual language or any nudity. The contestants are depicted in bikinis and swimwear, but this is justified by the context being that they are stepping off a plane onto an island resort. While there are statements made in the Promotion have been interpreted by the complainant as sexual innuendo (such as "the engines are running"), it is unclear on what purported basis such statements are sexual in nature. For example, the statement that the engines are running are equally applicable to the plain narrative of the Promotion being set on a plane given the plane's engines are actually running, and the Promotion features contemporaneous vision of the plane's jets.
7. We note that the complainant has on this occasion misheard the script of the Promotion which refers to "the engines are running", and not Ms Monk's engines running. Adult concepts involved in the Promotion such as adult relationships are open to interpretation and implied rather than direct, for example "buckle up and couple up" is an irreverent play on words and at no time reach a level beyond mild impact.
8. For the further reasons set out below, the treatment of each of the relevant elements of the PG classification in the Promotion were mild in impact in accordance with elements of the classification provisions of the Code.

*Sex*

1. The PG element of Sex requires "Depictions of and verbal reference to sexual activity must be restrained."
2. As noted earlier, the verbal references in the Promotion are restrained and in keeping with the context of the Promotion. The statement identified by the complainant as being sexualised in nature are:

* The engines are running (not as alleged by the complainant that Ms Monk's engines are running)
* Welcome aboard you beautiful, sexy singles
* Buckle up and couple up
* Six steamy weeks

1. Nine denies that any of the statements identified by the complainant are verbal references to sexual activity. While they may be playful and irreverent, none of the statements made above exceed the PG threshold which requires verbal references to sexual activity to be restrained. Any reference to sex is implied, rather than direct - and open to interpretation.
2. Contrary to the complainant's allegation, there is no use in the Promotion […] of "nice ass". This was a different and earlier version of the promotion (also distributed on social media), and was the version of the Promotion embedded in the news.com article referred to by the complainant which appears to be a source of the complaint, and alleged to be evidence of the problem because it makes reference to "Sophie Monk sizzles in "Love Island promo"". […]
3. In fact, the Promotion does not include any depictions of sexual activity. The level of visual detail of any sexual activity is extremely low, being only suggested if at all, and certainly not through any actual depiction of sexual activity.
4. The Promotion includes some vision at the conclusion of the Promotion showing the contestants dancing together on the beach, and one couple in an embrace. At one point, two of the contestants are shown with their hands touching between the aisle of the plane. Neither of these depicted activities are sexual activity. Any perceived sexual interaction is imagined, rather than real, and is restrained and inexplicit in compliance with the PG requirements of the classification guidelines.
5. The vision of the contestants removing their clothes to reveal their bikinis and swimwear are consistent with the narrative of the Promotion being that they are getting ready to land on the beach, and are not in the context of any sexual act. At no point is there any kissing between the contestants, or any prelude to any sexual act.
6. In any event, the PG classification of the Code does not preclude depictions of sexual activity, but requires that they be restrained. The scenes in the Promotion are not sexual acts. Accordingly, Nine maintains that the material included in the Promotion is restrained in accordance with the Code.

*Nudity*

1. The PG element of Nudity permits "Restrained depictions of nudity". The Promotion does not include any depictions of nudity. As already noted, the narrative of the Promotion involves the contestants landing on an island paradise and the depiction of the contestants in beachwear is consistent with the context of the Promotion.
2. While at times the contestants are in swimwear, at no stage is there any nudity as they remain clothed throughout. The types of outfits seen on the Promotion are what can be seen at a party island resort which involves swimming at the beach. Nine notes that the PG classification does, in any event, allow for depictions of nudity, provided it is restrained and justified by context.
3. Nine contends that the content of the Promotion is justified by the context of the narrative, being about the contestants preparing themselves for the beach. It is clear from the concluding scenes in the Promotion that the contestants will be spending a considerable amount of time in their swimwear at the Spanish island, and their attire is in keeping with the setting and occasion of the Program. For these reasons, Nine maintains that the material included in the Promotion is justified by context.

*Themes*

1. The PG element of Themes requires ''The treatment of social or domestic conflict and psychological themes should be carefully handled. Supernatural or mild horror themes should be carefully handled. Supernatural or mild horror themes may be included."
2. The Promotion does involve some mature themes involving adult relationships, but these relationships are only briefly referred to verbally (buckle up and couple up), and only tangentially depicted in group shots where the contestants are seen in pairs. There is no overt depiction of social or domestic conflict.
3. In Nine's view, the Promotion contains mild adult themes (if any), and some restrained material which do not exceed the thresholds contemplated by the PG classification.
4. Given that there is no reference to social conflict, or other graphic elements, the material included in the Promotion is mild in impact, and remains within the PG classification.

**Scheduling of the Promotion**

1. As Nine considers the Promotion does not breach the PG guidelines, it follows that the Promotion has not been scheduled in breach of the Code.
2. For the reasons set out above, Nine maintains the broadcast of the Promotion was in compliance with the Code.

1. <https://www.9now.com.au/love-island-australia>, accessed on 7 June 2018. [↑](#footnote-ref-1)
2. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-2)