Investigation report no. BI-491

| Summary |  |
| --- | --- |
| **Licensee** | Queensland Television Ltd. |
| **Station** | Nine |
| **Type of service** | Commercial—television |
| **Name of program** | *Married at First Sight* |
| **Dates of broadcasts** | 5 February 201913 February 2019 |
| **Relevant code** | Commercial Television Industry Code of Practice 2015 (revised 2018) |
| **Date finalised** | 19 August 2019 |
| **Finding** | No breach of Clause 2.1.1 [classification and scheduling] |

Background

In April 2019, the Australian Communications and Media Authority (the ACMA) commenced an investigation under the *Broadcasting Services Act 1992* (the BSA) into two episodes of *Married at First Sight* (the program).

The episodes were broadcast on Nine by Queensland Television Ltd (the licensee) on Tuesday5 February 2019 at 7.30 pm (**Episode 1**) and Wednesday13 February 2019 at 7.30 pm (**Episode 2**) and were classified M.

The ACMA received a complaint about each episode. The complaints alleged that the M classified episodes were ‘abusive’ and included ‘coarse language’, ‘excessive alcohol drinking’, ‘adultery’, ‘deceit’ and ‘deception’.

These matters are most appropriately addressed under ‘classification’. Accordingly, the ACMA has investigated the licensee’s compliance with clause 2.1.1 of the Commercial Television Industry Code of Practice 2015 (revised 2018) (the Code). Relevant code provisions are at **Attachment A**.

The program

*Married at First Sight* is a reality television program, described as:

Australia's most controversial social experiment returns. After being matched by three relationship experts, 20 strangers looking for love meet their partners for the first time at the altar in the quest to find true happiness. [[1]](#footnote-1)

Assessment and submissions

When assessing content, the ACMA considers the meaning conveyed by the material, the subject of the complaint, 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 complaints (at **Attachment B**) and submissions from the broadcaster (at **Attachment C**). Other sources are identified in this report where relevant.

Issue: Classification

Finding

The licensee did not breach clause 2.1.1 of the Code.

Reasons

**Episode 1**

Episode 1 contained the classifiable elements of language and themes.

The complaint to the ACMA stated:

[contestant A] was abusive to her man
If that was a man yelling at a woman he would [be] arrested or reprimanded

The licensee submitted to the ACMA:

The heated exchange between the participants arose in the context of [contestant A] becoming distressed at the prospect of being on a boat and participating in a parasailing activity. While on the boat, [contestant A] became increasingly agitated with both her situation and her interactions with [contestant B]. This culminated in both participants engaging in a verbal conflict during which [contestant A] shouted at [contestant B] and used a number of expletives.

[…] all expletives in this exchange were appropriately beeped to soften the impact of the exchange. Furthermore, arguments and conflict can be common issues that arise in adult relationships.

[…] the participants acknowledged that the exchange was undesirable and was not conducive to a successful relationship.

*Language*

The couple were depicted arguing during their date and there were numerous instances of what appeared to be aggressive ‘fuck’ language that had been ‘bleeped’ out. However, by the end of the episode, the couple were shown reflecting on their behaviour and acting civilly toward each other. The episode included no depictions of physical abuse.

*Themes*

Material classified M is appropriate for mature audiences. Under the Code the impact must be no more than moderate (i.e. lower than strong). All elements must be justified by context. Most adult themes can be dealt with, but intense adult themes should be handled with care.

The thematic content of interpersonal conflict was not an intense adult theme as contemplated by the Code and was justified by the underlying premise of the program; that is, putting two strangers together in a faux marriage scenario. Such a scenario is likely to lead to some conflict. However, the way the theme was treated in the episode, which was limited to verbal expression, did not result in an impact greater than moderate.

The verbal expression of interpersonal conflict resulted in the use of coarse language. Voice-overs were used to explain to the audience that the conflict (and therefore the coarse language) was largely a product of contestant A’s anxiety about going parasailing.

Although the coarse language was frequent during the segment in which the couple went parasailing, and was at times aggressive, the use of audio effects to conceal the coarse language meant that the overall impact did not exceed moderate.

The ACMA finds that Episode 1 was appropriately classified in accordance with the criteria set out at Appendix 1 to the Code, and broadcast within the appropriate time zone specified in section 2.2 of the Code.

Accordingly, the licensee did not breach clause 2.1.1 of the Code.

**Episode 2**

Episode 2 contained the classifiable elements of sexual references and themes.

The complaint to the ACMA stated:

MAFS [Married at First Sight] is a show that is not moral and not fit for viewing, continual foul language and questionable visual content is very questionable … MAFS are portraying adultery, immoral acts …

[…]

the other issue is the excessive alcohol drinking the show airs

[…]

MAFS were showing as a M rated program that will be seen by some juvenile audience that it is ok to cheat on your partner and to be deceitful and tell lies and think that this type of activity is ok

The licensee responded:

The Code […] does not preclude broadcasters from depicting inappropriate behaviour in its programs, provided those depictions are compliant with the provisions of the Code, and containable at the relevant classification.

[…]

We would also note that there are a range of behaviours in the community that may be considered unpalatable or confronting to watch. Nine’s obligation is to ensure that the material it broadcasts complies with the Code and the relevant classification criteria.

The licensee submitted to the ACMA:

While the episode did contain verbal references to one couple having recently had sex … these references were of low to moderate impact and any surrounding discussion of the event was appropriately restrained and was in no way graphic.

[…]

Similarly, the verbal sexual references made with respect to [contestants X and Y]'s relationship were of low to moderate impact. These references arose in the context of the participants continuing to work on the physical chemistry and in particular, [contestant Y]'s struggle with his lack of attraction to [contestant X]. Nine submits that these verbal references did not contain any inappropriately graphic or gratuitous descriptions of sexual activity, but rather referenced how [contestant X]'s past experiences had informed her approach to the physical side of this relationship and how this impacted on [contestant Y].

[…]

Nine submits that the consumption of alcohol is incidental to and justified by the context in which it appears, namely the format element of an adult dinner party.

*Sexual references*

The M classification can accommodate ‘detailed’ verbal sexual references. In this instance, verbal sexual references such as ‘threesomes’, ‘swingers’, ‘open relationships’ and ‘we had sex’, were not detailed.

*Themes*

At the M classification, ‘most adult themes can be dealt with, but intense adult themes should be handled with care’. The complaint alleged that the themes of sexual infidelity, deception, and the consumption of alcohol were inappropriate to the classification of the program. Sexual infidelity and deception, particularly in the context of a program that emphasises tensions within relationships, are adult themes that can be accommodated at the M classification. The episode contained no indications of an excessive or inappropriate use of alcohol, such as apparent drunken behaviour.

The ACMA finds that Episode 2 was appropriately classified in accordance with the criteria set out at Appendix 1 to the Code and was broadcast within the appropriate time zone specified in section 2.2 of the Code.

Accordingly, the licensee did not breach clause 2.1.1 of the Code.

Attachment A

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: The exceptions set out in section 2.3 are not relevant to this investigation.]

***2.2 Classification zones***

[…]

2.2.2 **M Classification zone.** Subject to subclause 2.3.2(a), material that has been classified M may only be broadcast at the following times:

a) School Days 7.30 pm to 6.00 am

 12 noon to 3.00 pm

b) Weekends and School Holidays 7.30 pm to 6.00 am

c) Public Holidays 7.30 pm to 6.00 am

[…]

 **Appendix 1: Television Classification Guidelines**

These Guidelines apply to all broadcast material required to be classified, except for Films (see clause 2.3.1).

*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 Mature (M) Classification**

Material classified M is for mature audiences. It is recommended for viewing only by persons aged 15 years or over. The impact must be moderate (i.e. higher than mild but lower than strong). All elements must be justified by context.

[…]

***Sex***: Depictions of sexual activity may be implied or simulated in a restrained way. Verbal references to sexual activity may be more detailed than depictions if this does not increase the impact.

[…]

***Language***: The use of coarse language is permitted but aggressive or strong coarse language should be infrequent overall.

[…]

***Themes***: Most adult themes can be dealt with, but intense adult themes should be handled with care.

Attachment B

Extracts of the complaints

***Complaint to the ACMA received 7 February 2019* (Episode 1):**

Abuse

[contestant A] was abusive to her man

If that was a man yelling at a woman, he would be arrested or reprimanded
Even […] said it was abuse

***Complaint to the ACMA dated 14 February 2019* (Episode 2):**

Moral

MAFS is a show that is not moral and not fit for viewing, continual foul language and questionable visual content is very questionable, the show is only interested in ratings, MAFS are portraying adultery, immoral acts that are not Australian and are not Christian as per say The BIBLE teachings and or within the Holy Quran

The persons on the show are only interested in being famous and MAFS is just a smut show being aired at 7:30pm

the other issue is the excessive alcohol drinking the show airs

a majority of the women on the show are two faced and deliberate in the immoral actions that they entertain towards the males

Past lesbians marrying a Virgin 29yrs old and making the issue National

MAFS is sending the wrong message to many millions of Australian Married persons that it is ok to cheat on your partner and disregards the rules of marriage

[…]

what I see is a show that is not quite right and not fit for proper viewing and sends a very wrong picture to whoever watches that the experts are totally wrong most of the time and gives questionable credibility to the medical profession , either mental health issues and or just grandeur issues

MAFS is an experiment on how to commit adultery and deceit and deception that the experts have matched very wrong persons together all for ratings and laughs

***Complaint to the ACMA dated 21 March 2019* (Episode 2):**

The issue is MORALS which was not addressed by Channel 9 but danced around the code

Unconscionable conduct and immoral content to the way of Australian life, the Christian beliefs that Australian use when it suits them and television stations splitting hairs

My complaint was a morality issue of marriage, the union of two people regardless of whether it is Adam and Eve or Adam and Steve and or Eve with Eve or any other combination thereof

MAFS were showing as a M rated program that will be seen by some juvenile audience that it is ok to cheat on your partner and to be deceitful and tell lies and think that this type of activity is ok

MAFS is sending the wrong picture to young and older people that it is ok to be immoral within Australia a Country based on Rule of Law and Christianity beliefs

Who really cares if MAFS is a reality program and the actions are the participants?

[…]

All deceit and deception should be edited out and all immoral acts …

Attachment C

Licensee response and submissions

***Licensee response to the complainant dated 21 March 2019* (Episode 2):**

We write in response to your online complaint received on 14 February 2019 regarding the program *Married at First Sight* (**Program**) broadcast on 13 February 2019. We understand that you have raised concerns with the content of the Program.

At the outset, we sincerely apologise that you were offended by the content of the Program, as that is certainly not Nine’s intention. Nine takes seriously the concerns raised by its viewers and makes every effort to ensure that the material it presents is consistent with community standards and complies with Nine’s regulatory obligations.

As a commercial free to air television broadcaster, the content broadcast by Nine is regulated by the *Commercial Television Industry Code of Practice 2015* (**Code**). The Code has a number of relevant requirements that relate to the broadcast of programs, including obligations to classify programs according to the strength and impact of their content, and schedule them in accordance with the applicable classification zones setting out the times at which material of a certain classification may be shown. The Code does not otherwise include provisions relating to the appropriateness of depictions of certain types of behaviours – the suitability of material for broadcast is assessed under classification.

*Married at First Sight* is a reality program and involves a social experiment in which strangers are matched and ‘married’. The experiment involves a number of individuals who each have different opinions about their ideal relationship, and part of the interest of the program relates to the respective views of each of the participants, the diversity of those views, and the way in which they navigate these differences with their new partners. The views expressed by the participants are their own, and in the context of a reality program, reflect a wide range of attitudes to relationships in order to contribute to the discourse of the debate on what makes a successful relationship.

Whilst *Married at First Sight* seeks to capture and convey the views of the participants in order to provide a true portrayal of their characters, the views expressed by the participants are their own, and not the views of Nine. The individuals portrayed in the Program are participants in a reality program – their statements and behaviour are unscripted and captured by the program as part of the social experiment. We do note that participants are offered psychological support and assistance which, appropriately, occurs in an off-camera context and does not form part of the program. Therefore, the fact that a participant is not shown receiving assistance does not indicate that they received no support, or that the program does not take seriously the issues of the health and wellbeing of participants.

The Code, however, does not preclude broadcasters from depicting inappropriate behaviour in its programs, provided those depictions are compliant with the provisions of the Code, and containable at the relevant classification.

The Code was amended in December 2015 to allow M (Mature) classified programming from 7.30 pm (instead of 8.30 pm under the previous Code) and MA15+ classified programming from 8.30 pm (instead of 9.00 pm under the previous Code).

Whilst we appreciate your concerns, the Code was the subject of lengthy public consultation and was registered by the Australian Communications and Media Authority who considered it to provide adequate community safeguards, including in relation to classification time zones. In scheduling its programs, Nine adheres strictly to the requirements of the Code.

The Program the subject of your complaint, was classified M (Mature). The M classification states:

*Appendix 1 Material classified M is for mature audiences. It is recommended for viewing only by persons aged 15 years or over. The impact must be moderate (i.e. higher than mild but lower than strong). All elements must be justified by context.*

Further, the Code provides sub-clauses for the M classification, as below:

***Sex****: Depictions of sexual activity may be implied or simulated in a restrained way. Verbal references to sexual activity may be more detailed than depictions if this does not increase the impact.*

***Nudity****: Depictions of nudity are permitted but must not be detailed if in a sexual context.*

***Language****: The use of coarse language is permitted but aggressive or strong coarse language should be infrequent overall*

***Themes****: Most adult themes can be dealt with, but intense adult themes should be handled with care.*

In this context, we do not consider that the material broadcast is of such a level as to have breached the M guidelines. 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. Nine maintains the Program was suitable for its M classification and scheduled in accordance with the Code which permits M rated material at or after 7.30pm.

We note in this regard that M material is permitted to include moderate adult themes provided they are justified by context. Accordingly, having assessed the Program against the provisions of the Code, we do not consider the material included to be inconsistent with its requirements.

Further, Nine provides consumer advice at the commencement of the Program advising it contains *Some Coarse Language, Sexual References,* and *Themes* in order to put viewers on notice to the types of themes they could expect to view in the Program.

We would also note that there are a range of behaviours in the community that may be considered unpalatable or confronting to watch. Nine’s obligation is to ensure that the material it broadcasts complies with the Code and the relevant classification criteria.

While for the reasons set out above we have complied with the Code, we thank you for taking the time to write to us in relation to the Program particularly as viewer feedback provides an important means for Nine to ensure that its broadcast content is consistent with community standards. We also again apologise for any distress or offence caused to you or your family. As noted above, this is not Nine’s intention and we do regret that you have had cause to write to us, however, if you are not satisfied with this response it is open to you to refer the matter to the ACMA.

***Licensee submission to the ACMA dated 13 May 2019* (Episode 1 and Episode 2):**

1. The ACMA has indicated it is investigating two complaints made in relation to episodes of the *Married At First Sight* (**MAFS**) program which were broadcast by QTQ in February 2019. The relevant complaints are as follows:

a) An anonymous complaint […] (**the [Episode 1] Complaint**) in relation to the MAFS episode broadcast on Tuesday, 5 February 2019 at 7:30pm (**the** **[Complainant 1] Episode**); and

b) A complaint from […] (**the [Episode2] Complaint**) in relation to the MAFS episode broadcast on Wednesday, 13 February 2019 at 7:30pm (**the [Complainant 2] Episode**).

(collectively, **the Complaints** and **the Episodes**)

2. The ACMA has provided Nine with extracts from the Complaints and indicated that it is investigating Nine's compliance with the *Commercial Television lndustry Code of Practice 2015 (Revised 2018)* (**the Code**). The ACMA have advised that the focus of this investigation includes, but is not limited, to the Code provisions relating to classification and scheduling in clause 2.1.1 of the Code. Accordingly, Nine has prepared submissions on compliance with the Code in response to the specific Episodes identified by the Complaints and the allegations contained in the extracts from the Complaints.

3. ln the event that additional aspects of the Episodes are being investigated for compliance with the Code, Nine would seek that these aspects be identified and particularised so that written submissions can be provided on same.

**Classification and Schedulinq**

4. Clause 2.1.1 of the Code provides:

*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.at out at section 2.2*

5. Nine notes that no exceptions in clause 2.3 of the Code are applicable to the Episodes.

6. As the Episodes commenced broadcast at 7:30pm on a Tuesday and Wednesday evening respectively, the relevant classification zone for the purposes of clause 2.1.1(b) would be the ‘*M Classification zone*’, as set out in clause 2.2.2 of the Code:

2.2.2 ***M Classification zone***. *Subject to sub-clause 2.3.2(a), material that has been classified M may only be broadcast at the following times:*

*a) School Days 7:30pm to 6:00am*

*12 noon to 3:00pm*

*b) Weekends and School Holidays 7:30pm to 6:00am*

*c) Public Holidays 7:30pm to 6:00am*

7. Given the above, Nine notes that for the purpose of clause 2.2.1(a), the applicable classification guidelines in Appendix 1 are as follows (**the Guidelines**):

***The Mature (M) Classification***

*Material classified M is for mature audience. lt is recommended for viewing only by persons aged 15 years or over. The impact must be moderate (i.e. higher than mild but lower than strong). All elements must be justified by context.*

***Violence:*** *Depictions of violence may be realistically shown only if they are not detailed or prolonged. Any depiction of or verbal reference to violence occurring in a sexual context must be infrequent and restrained, and strictly justified by the story line or program content.*

***Sex:*** *Depictions of sexual activity may be implied or simulated in a restrained way. Verbal references to sexual activity may be more detailed than depictions if this does not increase the impact.*

***Nudity:*** *Depictions of nudity are permitted but must not be detailed if in a sexual context.*

***Language:*** *The use of coarse language is permitted but aggressive or strong coarse language should be infrequent overall.*

***Drugs:*** *The use of illegal drugs should may be shown but the program must not promote or encourage their use.*

***Suicide:*** *Suicide must not be encouraged by the program and methods of suicide must not be instructional or shown in realistic detail.*

***Themes:*** *Most adult themes can be dealt with, but intense adult themes should be handled with care*.

8. Nine submits that neither the Episodes nor the Complaints raise any issues pertaining to physical violence, nudity, illicit drug use or suicide. Accordingly, Nine submits that these sections of the Guidelines are not relevant for the purpose of this investigation.

**Background**

9. MAFS is a reality television program that involves a social experiment in which strangers are matched and ‘married’. The experiment involves a number of individuals who each have different opinions about their ideal relationship. Part of the interest in the program relates to the respective views of these individuals,the diversity between those views, and the way in which they navigate differences in those opinions with their new partners.

10. The statements and behaviour of the participants are unscripted and captured by the program as part of the social experiment. Accordingly, the views expressed by the participants are their own and in the context of a reality program, reflect a wide range of attitudes to relationships in order to contribute to the discourse of the debate on what makes a successful relationship, and the causes and solutions to conflict in a relationship. By watching these interactions and conflicts, viewers can form insights on same.

11. Given the nature of the program, certain issues can arise which relate to matters of concern to the community, and which may be unpalatable or confronting to some viewers. Nine acknowledges that individual viewers may take particular issue with certain aspects of the content based on their personal perspectives. While cognisant of these issues, Nine's obligation is to ensure that the material it broadcasts is compliant with the requirements of the Code - in the context of this investigation, being adherence to the Guidelines.

12. As with all content broadcast by Nine, prior to broadcast, the Episodes were carefully reviewed by trained classifiers to ensure compliance with the Guidelines by confirming the content was:

a) permissible under the ‘M’ classification;

b) no more than ‘*moderate*’ in impact; and

c) justified by context.

**The** **[Episode 1] Complaint**

13. ln respect of the [Episode 1] Complaint, the ACMA has identified to Nine the following aspects of the complaint as relevant. ‘*Abuse - [contestant A] was abusive to her man*’ and ‘*lf that was a man yelling at a woman he would [be] arrested or reprimanded.*’

14. Nine understands from this that the [Episode 1] Complaint raises concerns with the treatment of a participant, [contestant B], by his partner, [contestant A], during the [Complainant 1] Episode, and in particular, her yelling at him during a heated exchange. The [Episode 1] Complaint appears to question Nine's compliance with the Guidelines pertaining to Language and Themes.

15. The Guidelines permit programs in this classification to contain coarse language. Further, aggressive or strong coarse language is also permitted, though it must be ‘*infrequent overall*’. Despite the Code clearly allowing coarse language within ‘M’ programs, Nine notes that all expletives contained in the [Complainant 1] Episode were appropriately beeped. Accordingly, Nine submits that the [Complainant 1] Episode was compliant with the Guidelines pertaining to language. Nine also submits that an appropriate visual warning of ‘*frequent coarse language*’ was included at the commencement of the [Complainant 1] Episode as required by clause 2.5 of the Code.

16. With respect to the allegation that the [Complainant 1] Episode depicted [contestant A] ‘abusing’ her partner, this appears to refer to a heated exchange between the two participants during a parasailing activity. The Guidelines allow ‘M’ programs to deal with ‘*Most adult themes*’ as well as ‘*intense adult themes*’, though the latter ‘*should be handled with care*’. Nine also notes the overarching requirement that the impact of the content should be ‘*moderate (i.e. higher than mild but lower than strong)*’ and that ‘*All elements must be justified by context*’.

17. The heated exchange between the participants arose in the context of [contestant A] becoming distressed at the prospect of being on a boat and participating in a parasailing activity. While on the boat, [contestant A] became increasingly agitated with both her situation and her interactions with [contestant B]. This culminated in both participants engaging in a verbal conflict during which [contestant A] shouted at [contestant B] and used a number of expletives. To the extent that this exchange can be characterised as ‘abuse’ as alleged by the [Episode 1] Complaint, Nine submits that the depiction of this dispute was compliant with the Guidelines.

18. Nine submits that while this segment of the [Complainant 1] Episode dealt with the theme of relationship conflicts, the theme was justified by context and was moderate in impact. As submitted above, all expletives in this exchange were appropriately beeped to soften the impact of the exchange. Furthermore, arguments and conflict can be common issues that arise in adult relationships. Accordingly, in so far as the [Complainant 1] Episode did depict [contestant A] and [contestant B] engaging in a verbal conflict, it was depicted in the broader context of their whole relationship dynamic and an exploration of the manner in which the conflict had arisen. It was appropriately justified by the context of the program, being a social experiment that examines the mechanics of adult relationships.

19. This notion is further reinforced by the inclusion of subsequent interviews with [contestant A] and [contestant B] in which they discussed their reactions and feelings in relation to the argument. ln particular, [contestant B] stated ‘*It's frustrating. It's really frustrating. Yesterday was great. Lovely girl - good, friendly, bubbly - but as soon she's out of her comfort zone, she puts up the brick walls and ... just don't want to talk to her*'. [contestant A] stated ‘*Obviously you don't ever want to reach that level of frustration when you do have to get that upset at your husband, but yeah, I just couldn't tolerate... him and... the nonsense any longer*'. It is therefore apparent that the participants acknowledged that the exchange was undesirable and was not conducive to a successful relationship.

20. ln light of the above, Nine submits that the argument between [contestant A] and [contestant B] depicted in the [Complainant 1] Episode was compliant with the Guidelines relating to adult themes as:

a) such themes are permitted within the ‘M’ classification;

b) the impact of the argument was of moderate impact or less; and

c) the depiction of the conflict was justified by context.

**The** **[Complainant 2] Complaint**

21. Similarly to the [Complainant 1] Episode, Nine notes at the outset that the [Complainant 2] Episode contained a visual warning to viewers at the commencement of the program advising that the program was rated ‘M’ as it contained some coarse language, sexual references and adult themes. As such, viewers were given an immediate warning about the nature of the content in the [Complainant 2] Episode.

22. The extracts from the [Episode 2] Complaint appear to take issue with the [Complainant 2] Episode's alleged:

a) use of ‘foul’ language;

b) depiction of ‘*questionable*’ themes that are ‘*not quite right and not fit for proper viewing*’ including, ‘*smut’, adultery, immoral acts, and lying*; and

c) depiction of ‘*excessive alcohol drinking*’.

23. As highlighted in relation to the [Complainant 1] Episode, the Guidelines do permit the inclusion of coarse language and viewers were warned of same. Having reviewed the [Complainant 2] Episode, Nine submits that the coarse language included in the episode was in line with the Guidelines and justified by context. Nine submits that due to the nature of the reality experiment format, circumstances of heightened emotion and conflict can arise between participants and given the unscripted nature of the program, some coarse language can result. However, not only is this language permitted by the Guidelines, but Nine also took steps to ensure that the impact of slightly stronger coarse language was appropriately moderated. For example, expletives of mild to moderate impact such as ‘*bullshit*’ and ‘*shit*’ were sparing throughout the program and were not beeped, whereas expletives of stronger impact such as ‘*fuck*’ were entirely beeped to mollify their impact.

24. With respect to the Guidelines pertaining to sex, Nine notes that the [Complainant 2] Episode did not contain any visual depiction of sexual activity. While the episode did contain verbal references to one couple having recently had sex ([contestant C] and [contestant D]), these references were of low to moderate impact and any surrounding discussion of the event was appropriately restrained and was in no way graphic. The references simply alluded to the fact that the couple had been intimate and that they were extremely positive about this development in their relationship.

25. Similarly, the verbal sexual references made with respect to [contestant X] and [contestant Y]'s relationship were of low to moderate impact. These references arose in the context of the participants continuing to work on the physical chemistry and in particular, [contestant Y]'s struggle with his lack of attraction to [contestant X]. Nine submits that these verbal references did not contain any inappropriately graphic or gratuitous descriptions of sexual activity, but rather referenced how [contestant X]'s past experiences had informed her approach to the physical side of this relationship and how this impacted on [ contestant Y]. Nine would submit this is in keeping with the requirements for sexual content to be of moderate impact and conveyed in a restrained manner that is justified by context.

26. The second central element of the [Episode 2] Complaint is that the episode contained ‘questionable’ themes such as adultery, lying and immoral acts. It is further suggested that the depiction of this content ‘*will be seen by some juvenile audience that it is ok to cheat on your partner and to be deceitful...’.* Nine understands this to be a reference to the exchanges between [contestant E] and [contestant A] during the [Complainant 2] Episode. Nine also notes that as an ‘M’ program, the [Complainant 2] Episode is recommended for viewers aged 15 and above and therefore is not directed towards a ‘*juvenile audience*’.

27. Fidelity and honesty in relationships are issues taken seriously in the community. However, as set out in paragraphs 9 to 11 of these submissions, the views and behaviours depicted on MAFS are clearly those of the participants and are not presented as being representative of Nine's views. Moreover, while Nine acknowledges that some of the views and behaviours depicted in this reality program may be considered by individual viewers as unpalatable or contrary to their own moral position, Nine's obligation is to ensure that the content in the [Complainant 2] Episode was consistent with the requirements of the Code and the Guidelines.

28. The Guidelines allow most adult themes to be dealt with provided that ‘*intense adult themes’* are ‘*handled with care*’. Accordingly, Nine submits that the [Complainant 2] Episode was permitted to deal with the issues of infidelity and honesty in adult relationships provided the impact of same was moderate and justified by context. As a reality program based on human interactions, there are situations that can arise in MAFS that see certain participants form connections with participants who are not their ‘spouse’. ln reacting to and navigating these situations, the participants provide insights on the multitude of possible approaches to relationships. Accordingly, to the extent the [Complainant 2] Episode engaged with the issues of infidelity and honesty, this was indeed justified by the broader context of the experiment as a whole.

29. At a number of stages throughout the [Complainant 2] Episode, [contestant E] and [contestant A] discuss their growing attraction and chemistry with one another as they create a plan to spend more time together. They also refer to their growing sense of unfulfillment from their current ‘partner’, with [contestant E] stating that he does feel a sense of guilt at his attraction to [contestant A]. Nine submits that while adult in nature, the presentation of this content in the [Complainant 2] Episode was moderate in impact and therefore consistent with the Guidelines.

30. ln relation to the concern with the ‘*excessive*’ consumption of alcohol, a part of the MAFS format sees the ‘couples’ attend a number of pre-arranged dinner parties during the course of the experiment. The dinner parties provide an opportunity for the participants to meet one another and discuss various relationship issues that arise within and between the ‘couples’ while relationship experts observe and commentate these interactions. During the dinner parties, the participants are served alcoholic beverages and the dinner party depicted in the [Complainant 2] Episode did see the participants drinking alcohol.

31. Nine notes that all participants in MAFS are over 18 years of age and are therefore legally permitted to consume alcohol if they choose to do so. Additionally, the consumption of alcohol is in no way the focus of the [Complainant 2] Episode - the primary focus being the adult participants attending a dinner party, being a more causal and relaxed group setting, at which they discuss their relationships and have their interactions observed by the relationship experts. Nine notes in this regard the overarching requirement of the Guidelines that content must be justified by context. Nine submits that the consumption of alcohol is incidental to and justified by the context in which it appears, namely the format element of an adult dinner party.

32. Nine denies that the [Complainant 2] Episode contained ‘*excessive*’ consumption of alcohol, particularly as no participant was inebriated during the dinner party nor depicted as such. For example, no participant had slurred speech or was unable to balance such that they fell over. Accordingly, Nine submits that the [Complainant 2] Episode depicted adults legally consuming alcohol at a dinner party.

33. Finally, Nine notes that the Guidelines do not explicitly prohibit the depiction of alcohol consumption or indeed excessive alcohol consumption. As alcohol consumption is restricted to adults, Nine submits that the Guidelines would permit the depiction of same as an adult theme which may be dealt with in the ‘M’ classification.

34. Having regard to the above, Nine submits that the language, sexual reference and adult themes in the [Complainant 2] Episode were compliant with the Guidelines and that viewers were given appropriate visual warning of same at the commencement of the program.

**Conclusion**

35. For the reasons articulated above, Nine submits that it fulfilled its obligation to ensure that the content of the Episodes was compliant with the requirements of both the Code and the Guidelines and thus there has been no contravention of the Code in this instance.

1. <https://www.9now.com.au/married-at-first-sight>, accessed on 13 May 2019. [↑](#footnote-ref-1)
2. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-2)