Investigation report no. BI-542

| Summary |  |
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| **Licensee [Service]** | Network Ten (Sydney) Pty Ltd [Ten] |
| **Finding** | No breach of Clause 2.1.1 [classification and scheduling] |
| **Relevant Code** | Commercial Television Industry Code of Practice 2015 (revised in 2018) (the **Code**) |
| **Program** | *Studio 10* |
| **Description** | A panel/talk show broadcast weekdays between 8.30 am and 12.00 pm |
| **Date of broadcast** | 9 October 2019 |
| **Date Finalised** | 20 February 2020 |
| **Type of Service** | Commercial—Television |
| **Attachments** | **A** - extracts of the complaint to the ACMA**B** - extracts of the licensee’s submissions to the ACMA**C** -relevant code provisions and the ACMA’s assessment process  |

Background

In December 2019, the Australian Communications and Media Authority (the ACMA) commenced an investigation under the *Broadcasting Services Act 1992* (the BSA) into a broadcast of *Studio 10* on 9 October 2019 (the **program**).

The ACMA received a complaint alleging that a host of the program made comments which incited hatred and normalised violence towards climate protestors.

Despite the complaint alleging that the program incited hatred against protesters, clause 2.6.2 [incite hatred] of the Commercial Television Industry Code of Practice 2015 (revised in 2018) (**the Code**) would not apply, as protesters are not a relevant group for the purpose of the clause.

Clause 3.2.1 [cause distress] of the Code would also not apply, as it only applies to news and current affairs programs. Consequently, the ACMA has investigated the licensee’s compliance with clause 2.1.1 [classification]. Details of this provision, other relevant provisions and the ACMA‘s approach to assessing compliance are at **Attachment C**.

Issue: Classification

Finding

The licensee did not breach clause 2.1.1 of the Code.

Reasons

The program included a discussion about proposed Queensland laws that could impose custodial sentences for climate change protesters. During this discussion Ms Kerri-Anne Kennerley was asked if jail time was ‘a bit extreme’. As part of her response, Ms Kennerley stated:

leave them all super glued to wherever they do it…

the guy hanging from the Storey Bridge, why send emergency services to look after, or get a moron down…

leave them there and you just put little witch’s hats around them or use them as a speed bump…

put them in jail and forget to feed them…No just put them in an aged care…

The comments were made within the context of a panel discussion, where panellists were encouraged to express their opinions and Ms Kennerley’s opinion was countered by that of Ms Sarah Harris, who disapproved of prison as a punishment.

The licensee submitted to the ACMA:

The remarks were clearly exaggerated and not intended to be taken literally, mitigating their impact. The comments were said in jest and contextualised within a discussion about proposed new laws to deal with climate change protestors. Sarah Harris provided an alternative view, suggesting that jail time was ‘a bit out there’.

Before the program concluded, Sarah Harris […] clarified Ms Kennerley’s remarks, affirming that she wasn’t inciting violence. Kerri-Anne confirmed that she was indeed speaking in hyperbole and her words were clearly a joke.

Clause 2.1.1 requires that, subject to limited exceptions, all programs 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 program was classified PG. Under Appendix 1, the treatment of themes of social conflict in programs classified PG should be handled with care. Adult themes must be mild in impact and remain suitable for children to watch with supervision.

Relevantly, Ms Kennerley’s comments concerned the classifiable element of themes, which in this case related to civic protest. Ms Kennerley suggested a public response to protesters could involve actions of a violent nature. The ACMA considers the reference to violence was closely associated with the theme of civic protest and it has assessed the impact of her comments against the classifiable element of themes.

The ACMA notes that Ms Kennerley’s comments concerned real people who were involved in the climate change protests in Brisbane and were delivered with a degree of frankness. Although co-host Mr Joe Hildebrand appeared to add humour to the discussion when he implied that offended viewers could ‘send your letter to the Today Show’, it is arguable whether all members of the audience would have interpreted Ms Kennerley’s comments as ‘clearly a joke’ at the time they were said.

However, while the references to running over protesters with a vehicle, or starving them, implied acts of violence or cruelty, the ACMA agrees with the licensee’s submission that Ms Kennerley’s remarks would generally have been recognised as being exaggerated and not to be taken literally. This did not negate their capacity to offend, but it did mitigate their impact.

While the ACMA acknowledges that many viewers may disagree with the opinions presented by Ms Kennerley, it considers that the program’s treatment of themes was mild in impact and remained suitable for children to watch with supervision.

The ACMA finds that this program 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.

Attachment A

Complaint

**Extracts of the Complaint to the licensee**

On the Studio 10 program Kerri-Anne Kennerley incites violence and torture against climate protesters. Specifically she said ‘use them as speed bumps’ and then later ‘put them in jail, forget to feed them’. The defence of ‘she was just joking’ doesn't apply. Violence and torture are no joking matters. She needs to make a formal apology and make concrete amends beyond lip service to any ‘sensitivity’ training.

***Extracts of the Complaint to the ACMA dated 20 November 2019:***

The presenter, Kerr-Anne Kennerley, joked that climate protestors should be ‘used as speed bumps’. She, and her hosts, suggested it was ‘just a joke’. Channel 10 responded to my complaint by saying she confirmed she was speaking in ‘hyperbole’ and ‘there was no intent to cause offence’.

I find the response lacking in 2 areas:

- speaking, even in hyerbole, that a particular section of Australian society should be ‘used as speed bump’, is irresponsible. This kind of language normalises violence and disdain towards their subjects, in this case climate protestors. It is abhorrent that channel 10 is willing to participate in the dehumanisation of any group just because ‘it was just a joke’. I doubt channel 10, nor Mrs Kennerley, would take kindly to the same kind of ‘joke’ being told about them or their loved ones.

- the fact Kerri-Anne Kennerley didn't mean to cause offence is irrelevant to whether a breach of the code occurred nor does it excuse her behaviour. ‘No intent to cause offence’ is not a defence against bad behaviour.

The tactic of claiming to be speaking in jest and that no offence is intended are both favourites of bad faith actors. It allows them to say terrible things to incite and rally their followers while deflecting all criticism and shedding all responsibility. It is therefore necessary to be stringent against such tactics when they are used by public broadcast presenters to incite and normalise violence, hatred and division.

No one should be joking about intentionally harming another human being.

Attachment B

Licensee’s response and submissions

***Licensee response to the complainant dated 15 November 2020:***

*Studio 10* is broadcast each weekday from 8.30 am. Viewers recognise that the format and tone of this program is conversational, opinion based and, at times, humorous. It relies on the candid responses of the hosts to varying issues that arise for discussion in the context of a morning program.

Filmed before a live studio audience, the program is classified PG. The PG classification recommends parental supervision for younger viewers. Material classified PG may contain careful presentations of adult themes or concepts but must be mild in impact and remain suitable for children with supervision.

You refer to Kerri-Anne Kennerley’s comments regarding climate change protesters. Upon review, we consider the program complied with the Code. The comments were said in jest. Before the show concluded, Sarah Harris reiterated the tone of her remarks, affirming that Kerri-Anne wasn’t inciting violence.

Kerri-Anne confirmed that she was indeed speaking in hyperbole and her words were clearly a joke. There was no intent to cause offence. Studio 10 has extensively addressed a range of opinions on this subject.

***Licensee submission to the ACMA dated 23 January 2020:***

*Studio 10* is a morning program, broadcast live on weekdays between 8.30 am and 12.00 pm, with ‘best of’ editions broadcast on Saturdays and Sundays. The program is classified PG and filmed in front of a live studio audience.

The program broadcast on 9 October 2019 included discussion of proposed new Queensland laws to target the actions of climate change protestors.

**Issue: Clause 2.1.1 [classification and scheduling]**

**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*

*[…]*

***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.*

*[…]*

***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.*

***Violence****: Depictions of violence must be inexplicit and restrained. More leeway is permitted when the depiction is stylised and/or unrealistic.*

*[…]*

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

**Comments on Code compliance**

Clause 2.1.1 requires that, subject to limited exceptions, all programs 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.

*Studio 10* is classified PG. The PG classification recommends parental supervision for viewers under the age of fifteen. Material classified PG may contain careful presentations of adult themes or concepts but must be mild in impact and remain suitable for children to watch with supervision. PG classified material may be broadcast at any time of the day.

The segment in question concerned reports of proposed new Queensland laws being fast-tracked to deal with the actions of climate change protestors, including potential jail time.

When asked by host Sarah Harris if the measures were ‘too extreme’, Kerri-Anne Kennerley said:

‘Oh no! Personally, I would leave them all super glued to wherever they do it, like forever ... the guy hanging from the Storey Bridge. Why send emergency services to look after, or get a moron down? Leave him there until he gets himself out.’

‘No emergency services should help them, nobody should do anything, leave them there, and you just put little witches hats around them, or use them as a speed bump.’

 At the end of the show, the hosts addressed the comments, with Harris saying, ‘you were obviously not inciting violence, it was a joke.’

‘Heavens no,’ Kennerley replied.

 Harris continued to say, ‘you were speaking in hyperbole.’

‘I was speaking like you said,’ Kennerley said.

Network 10 submits that the content was no stronger than mild in impact and therefore complied with the PG classification and the Code. The treatment of violence and adult themes was mild in impact and remained suitable for children to watch with supervision. The remarks were clearly exaggerated and not intended to be taken literally, mitigating their impact. The comments were said in jest and contextualised within a discussion about proposed new laws to deal with climate change protestors. Sarah Harris provided an alternative view, suggesting that jail time was ‘a bit out there’.

Before the program concluded, Sarah Harris noted that Kerri-Anne’s comments had been reported by other media organisations and clarified Ms Kennerley’s remarks, affirming that she wasn’t inciting violence. Kerri-Anne confirmed that she was indeed speaking in hyperbole and her words were clearly a joke.

As the content complied with the PG classification requirements, the broadcast complied with the Code requirements in section 2.2 as PG classified material may be broadcast at any time.

Accordingly, Network Ten (Sydney) Pty Ltd did not breach clause 2.1.1 of the Code.

Attachment C

Relevant Code provisions

***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:

1. classified in accordance with the criteria set out at Appendix 1; and
2. 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.

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

1. School Days 7.30 pm to 6.00 am

12 noon to 3.00 pm

1. Weekends and School Holidays 7.30 pm to 6.00 am
2. Public Holidays 7.30 pm to 6.00 am

2.2.3 **MA15+ Classification zone**. Subject to subclause 2.3.2(b), material that has been classified MA15+ may only be broadcast between 8.30 pm and 5.00 am on any day.

**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 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.

***Violence***: Depictions of violence must be inexplicit and restrained. More leeway is permitted when the depiction is stylised and/or unrealistic.

[…]

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

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.[[1]](#footnote-1)

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

1. *Amalgamated Television Services Pty Limited v Marsden* (1998) 43 NSWLR 158 at pp 164–167. [↑](#footnote-ref-1)