

First enforceable undertakings from commercial television licensees

In February 2009, ACMA announced that it had accepted enforceable undertakings from both the Nine Network and WIN Corporation to ensure that *Underbelly* and the range of programs featuring the chef Gordon Ramsay are correctly classified. This is the first time ACMA has accepted enforceable undertakings from commercial television licensees relating to matters covered by a code of practice.

These actions followed ACMA's 2008 findings that five episodes of *Ramsay's Kitchen Nightmares* and three episodes of *Underbelly* were incorrectly classified M (Mature), rather than the more restrictive MA (Mature Audience). The enforceable undertakings were accepted ahead of the broadcast of new seasons of the programs in question.

The Nine Network was required to put in place more rigorous classification procedures for future series of *Underbelly*, including the second series, *A Tale of Two Cities*. Nine has also undertaken to reclassify repeat broadcasts of a number of episodes of the original *Underbelly* series, and implement additional training and reporting processes. Under its enforceable undertaking, Nine must classify as MA all episodes of *Kitchen Nightmares* and other programs substantially featuring Gordon Ramsay, subject to any material change in their content.

Under a separate enforceable undertaking, WIN Corporation licensees, who receive programs and classification advice from Nine under a program supply agreement, are also required to ensure that future broadcasts of these programs meet the classification guidelines.

ACMA has accepted the undertakings from

both Nine and WIN licensees for a period of two years. Each network is required to provide weekly reports to ACMA on any complaints they receive alleging code breaches with respect to these programs.

The announcement was well received and widely covered in the press, where it was also noted that the enforceable undertakings were accepted in time for the commencement of the 2009 series of both *Underbelly* and *Ramsay's Kitchen Nightmares*.

Chris Chapman, ACMA Chairman, commented that the remedial step was the '... product of extensive discussions with both the Nine and WIN networks about action they will take over the next 24 months to ensure that these programs are correctly classified and shown in the appropriate time slot.' He noted further that 'it is a response to the unacceptably high number of incorrectly classified *Underbelly* and Ramsay programs broadcast in 2008. It is aimed at creating an improved compliance culture, while giving ACMA an avenue to pursue further remedial action if necessary.'

ACMA has a range of powers intended to enable it to deal effectively with breaches of the *Broadcasting Services Act 1992* (the Act), program standards, licence conditions and codes developed under the Act, all in a

manner commensurate with the seriousness of the breach. The Commercial Television Industry Code of Practice (the code) requires all programs other than news, current affairs and sporting events to be classified in accordance with its guidelines, and limits the times at which programs with more restrictive classifications can be broadcast and promoted.

Where there has been a breach of the code, section 205W of the Act permits ACMA to accept enforceable undertakings for the purpose of securing future compliance with the code or with the Act itself. Should ACMA subsequently find that one of the licensees has breached its undertaking, ACMA is empowered under section 205X to apply to the Federal Court for an order that the licensee pay ACMA an amount equivalent to the financial benefit the licensee obtained by breaching the undertaking. For this purpose, Nine has provided to ACMA a confidential estimate of the financial benefit it may obtain by broadcasting one of the programs with an incorrect classification. ACMA could also apply to the Federal Court for other orders regarding Nine or WIN licensees aimed at enforcing the undertakings.

In the absence of an enforceable undertaking ACMA would not otherwise be able to seek these court orders.

ACMA understands that this is the first time a calculation has been made about the potential financial benefit to a commercial television licensee of incorrectly classifying a program. The calculation of this financial benefit took into account the difference between charges for advertising during a program in the earlier and more financially lucrative 8.30 pm timeslot compared with the later, less restrictive MA time slot.

This response to the unacceptably high number of incorrectly classified *Underbelly* and Ramsay programs broadcast in 2008 is aimed at creating an improved compliance culture, while giving ACMA an avenue to pursue further remedial action if necessary.

The enforceable undertakings

The enforceable undertakings apply to any repeat broadcasts of the 2008 *Underbelly* series, as well as to the production of the new second series *A Tale of Two Cities*. They also cover the range of programs featuring celebrity chef Gordon Ramsay, including *Ramsay's Kitchen Nightmares*, *Kitchen Nightmares*, *Boiling Point*, *Hell's Kitchen* and *The F Word*.

More specifically, in relation to the *Underbelly* programs, Nine and WIN will:

- reclassify or edit programs found by ACMA to be incorrectly classified
- provide reports to ACMA on any complaints alleging code breaches with respect to these programs.

In addition, Nine has undertaken to:

- conduct an extensive education program for the *Underbelly* production team to outline the requirements of the M classification
- develop 'detailed internal classification guidelines' based on ACMA's findings
- ensure that classifiers review scripts and assess each episode of the 2009 series, to make certain that the classification requirements are met
- report to ACMA on its compliance with the requirements for classification training.

All programs featuring Gordon Ramsay will be classified MA. Nine and WIN will also provide reports to ACMA on any complaints they receive alleging code breaches with respect to these programs.

With respect to the Nine Network, ACMA has accepted undertakings from Nine Network Australia Holdings Pty Ltd and its capital city licensees:

- TCN Channel Nine Pty Ltd
- Queensland Television Ltd
- General Television Corporation Pty Ltd
- Territory Television Pty Ltd.

Recognising the circumstances faced by network affiliates who receive programming under program supply agreements, ACMA has accepted undertakings from WIN Corporation and only those of its licensees whom ACMA found had breached the M classification guidelines with respect to episodes of *Underbelly* or *Ramsay's Kitchen Nightmares*:

- Channel Nine SA Pty Ltd
- WIN TV Victoria Pty Ltd
- SWAN TV & Broadcasting Pty Ltd.

The enforceable undertakings are available on the ACMA website at www.acma.gov.au (go to Licensing & Regulation > ACMA's enforceable undertakings).



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