

**Submission to The Senate Environment, Communications and the Arts
Committee**

Inquiry into the effectiveness of the broadcasting codes of practice

Submission

To
**The Environment, Communications and the Arts
Committee**

Of
The Australian Senate

Inquiry Into

**The Effectiveness of the Broadcasting Codes of
Practice**

Prepared by

Paul Russell

Senior Officer

The Office of Family and Life

The Catholic Archdiocese of Adelaide

39 Wakefield Street,

ADELAIDE SA 5000

GPO Box 1364,

ADELAIDE SA 5001

Phone: 08 82108188 Fax: 08 82232307 Email: prussell@adelaide.catholic.org.au

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1. Introduction

Thank you for the opportunity to comment on the effectiveness of the broadcasting codes of practice under the terms of reference of this inquiry.

The trend in programming over recent years towards 'real-life' type TV programs such as *Ramsay's Kitchen Nightmares* creates new arguments vis-à-vis the integrity of the presentation (as 'real-life') and the need to maintain viewing standards in designated classification timeslots (the 'real-life' genre being often argued as an excuse for the acceptance of common language including swearing).

The revelation that the 'F word' was used 80 times in a one hour program raises many questions. This submission will look at these questions from the perspective of the family and their need to have confidence both in the ratings system and in broadcasters' compliance with relevant codes of practice.

Public discussion on censorship of any type will invariably draw out comments like, 'turn it off' or 'change the channel' from those who see no need to regulate the media or who find no offence in the subject at hand. Such arguments taken to their ultimate conclusion would suggest that all media should be entirely unregulated. Few people hold this position, in reality. We will all find offence at something, sometime. More often than not, the distinction is simply a matter of degree, which then raises questions about the common good and how well our society protects the vulnerable and the young.

We believe that the current classification guidelines are in need of urgent review. In respect to coarse language, they are far too subjective; providing broadcasters with too much 'wriggle-room'. The manner in which the code is worded allows a broadcaster, whether deliberately or otherwise, to push at the boundaries of decency with relative impunity (see 3.1).

We also believe that there needs to be a penalty system attached to serious breaches. We cite the US experience as support. The complaints system needs bite. Justice needs to be seen to be done. Parents have the right and must enjoy confidence in the system.

Above all in this submission we stress that the code and its administration must work towards maintaining public confidence in the rating system.

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2. How much is too much? How often is too often?

Context and frequency appear to be the principle criteria in assessing the suitability or otherwise of programs containing coarse language. We believe that there is also a direct relation between the frequency and severity of the language and other classification issues such as violence, vilification and discrimination.

We believe that consistent bad language tends to desensitize viewers into a state of more-or-less acceptance that such behaviour is socially tolerable. Young and impressionable viewers, in particular, can easily be drawn in to adopting a pattern of speech amongst their peers that emulates what they hear on television. This is particularly so when the character using bad language is something of a hero figure, as is the case with Gordon Ramsay.

The contrary view is, of course, that such language is merely a reflection of society and current social mores. In response we would simply point to the burgeoning crime scene investigation dramas produced in recent years in the USA. Most, like CSI: NY (produced for the CBS free to air network) contain little if any bad language even though the subject matter might suggest that the criminal characters would 'normally' use such language. Certainly such high quality dramas do not suffer in popularity from any perceived lack of realism.

We accept that *Ramsay's Kitchen Nightmares* (particularly Episode 4 of the USA series as cited in the media) is an example at the extremes. A fan of the show, this writer is prepared to accept that the tension and high drama in a dysfunctional kitchen is bound to find expression through 'colourful language' *sometimes*.

The M classification, however, would lead the viewer to believe that the program would be suitable for young people 15 years and older. We do not accept this premise. We believe that parents who supervise the viewing habits of their teenage children by reference to the classification would have been shocked and dismayed at the language in episode 4 - even if they knew and accepted the level of bad language in earlier episodes. Parents need and deserve clarity and consistency; otherwise their ability to instill and support their own values to their children is compromised and undermined.

The occasional 'F word' in an emotional exchange is contextualized as emphasis. This is easily understood even by young children - they may be tempted to repeat the word, but they know that there's something not right about it. Gross repetition of the 'F word' in the same context tends to desensitize even adults to its use. Perhaps even worse, however, is the not-so-subtle message: using violent and abusive bad language is necessary to get your own way.

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Rather than standards reflecting society, these programs effectively drive social standards down.

With *Ramsay*, we have an example of a real life-type show that regularly pushes the boundary of decency in respect to language. In the case of episode 4, the show descended to new depths causing a public outcry. Programs in this 'real-life' genre will continually push at the edges of the public perception of decency by their very nature. They require closer scrutiny as does the code itself.

3. The Broadcaster's duty of care

We wonder at why *Ramsay's* Australian broadcast network, Channel Nine, did not see fit to move episode 4 (or the whole series for that matter) to the 9-00 pm timeslot where the MA classification begins. Clearly the show has a strong following who would not have been greatly inconvenienced by the half-hour delay. Furthermore, delaying the show could have been promoted to Nine's advantage as an exercise in social responsibility. Or at least, as has happened many times before, this particular episode could have been promoted as an 'adults only' episode at an 'adults only time slot' of 9.00 pm or 9.30 pm.

The program will surely have come to the broadcaster with a synopsis of each episode and, we expect, a guide as to any issues that may relate to Australian classification codes. There can be no excuse of ignorance on the broadcaster's part.

We wonder whether, in full knowledge of the nature of the coarse language in *Ramsay*, that the broadcaster issued the program at the 8-30 pm timeslot expecting it to cause a controversy and welcoming this inevitability as a ratings booster. In this context, episode 4 is little more than an incremental step if the general nature of the program is accepted as the new lower standard in acceptable viewing.

3.1. 60 Minutes - making the situation worse

In what can only be described as a further offence as an attempt at a defence, Channel Nine's *60 Minutes* program (Sunday April 21) only succeeded in magnifying the problem. In a twelve minute segment called, 'The Chef from Hell', *60 Minutes* attempted to rehabilitate Gordon

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Ramsay's image by showing his softer side in an interview with the chef at home with his family.

This segment included a number of short excerpts from the Ramsay program, including 29 unedited expletives (including the 'F bomb') over the twelve minutes. All this in the PG timeslot – a clear breach of the guidelines and one, it must be said, for which there can be absolutely no excuse.¹

We believe that both Ramsay and 60 Minutes provide the clearest argument possible for change and demonstrates that at least one network is prepared to take on social mores and the classification guidelines for its own ends. Theirs is a challenge that the ACMA must meet head on if it is to maintain credibility.

4. Vilification

While the code in respect to coarse language (see below) is ambiguous, to say the least, the code is entirely unambiguous as to Proscribed Material (section 1.8).

Episode 4 of *Ramsay* is in clear breach of section 1.8.6 of the Commercial Television Industry Code of Practice which proscribes vilification. Late in this episode Ramsay refers to the restaurant's chef as "You French pig. Close the fucking place."² (He then repeats the insult adding the 'C bomb'). As Ramsay would well know, to call a French person a pig or a cow is to gravely insult them; to add the two classical 'bombs' makes this severe vilification indeed.

There can be no excuse for vilification of this sort. We conclude that this episode should never have been aired on Australian television.

5. The current classification system

Parents need to be able to rely on a common understanding of what they can expect not to find in a G, PG, or M classification and time slot.

¹ See: See: <http://sixtyminutes.ninemsn.com.au/article.aspx?id=449154>

And also Herald Sun article: <http://www.news.com.au/heraldsun/story/0,21985,23579631-662,00.html>

² This first comment was repeated in the 60 Minutes program.

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The distinct classification zones and their respective timeslots are similar, if not identical, to those operating elsewhere. The problem, as we see it, lies in the explanations within each classification of what is acceptable. In reference to 'coarse language' we argue that there is little in the way of clear differentiation between the classification zones that make the distinctions clear.

In respect to language, the classifications read as follows:

General (G) Classification

2.3 ***Language:*** Very mild coarse language generally considered socially offensive or discriminatory may only be used infrequently when absolutely justified by the story line or program context.

Parental Guidance Recommended (PG) Classification

3.3 ***Language:*** Low-level coarse language may only be used infrequently, when justified by the story line or program context.

Mature (M) Classification

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

Mature Audience (MA) Classification

5.3 ***Language:*** The use of very coarse language must be appropriate to the story line or program context and not overly frequent or impactful.

Representing the form of words in a table makes the problem more obvious:
(see next page)

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Classification	Description	Frequency	Context
G General	Very Mild	Infrequent	When absolutely justified by storyline or context
PG Parental Guidance	Low Level	Infrequent	When justified by storyline
M Mature	No description	Infrequent [more frequent if justifiable]	When appropriate to storyline. Not very aggressive.
MA Mature Audience	Very Coarse	Not overly frequent or impactful	Important to storyline

We find little in these guidelines that give confidence to parents in regards to the advertised classifications of free-to-air programming.

Each category appears to have an easy-out clause in the allowable context and confusing gradations in both description and frequency.

At the beginning of the *Ramsay* program, the viewer warning said: *(M) frequent coarse language*. In reference to the code, this implies that the broadcaster must have believed the coarse language to be justifiable and appropriate in the context of the storyline. With such loose and subjective descriptions, it is not hard to believe that, in any complaint, the broadcaster might simply fall back on this defence.

It is interesting to note that *Ramsay* does not fit within the frequency guide for MA programs (very coarse, overly frequent and impactful). It seems strange to find that a program should fit within a more restrictive classification and not the least restrictive.

The descriptions above are replete with subjective statements, saving the use of 'absolutely' in the context description of the G classification. Strange, indeed, that the only absolute is used to *allow* coarse language in the G classification, which invites the conclusion that the code is entirely permissive in its nature rather than restrictive - as it should be.

The classification statements in respect to language in all of the classification areas are too loose and subjective to provide an accurate understanding of what is and is not acceptable in programs. These statements also provide an easy defence for broadcasters which undermines the code and the classification system in general.

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6. US Prime time – some important observations

In an earlier reference to other programs currently on offer during prime time in Australia we noted the distinct lack of coarse language in those programs emanating from the United States. We believe that the reasons behind this startling point of difference can help us develop a better way.

The US Federal Communications Commission has a similar complaints process to that of Australia and notes, quite blandly, that complaints can take up to nine months to process.³ Justice seems often to take time and, in spite of our observations about US programs shown in Australia, it seems also that there are no shortage of complaints (although we observe that many relate to live broadcasts, for example: the Super Bowl ‘wardrobe malfunction’.)

The differences we observe in prime time viewing in particular revolve around the inclusion of direct and indirect penalties.

6.1. Direct penalties – The Broadcast Decency Enforcement Act ⁴

In 2006, the US Congress gave ascent to an amendment to the Communications Act of 1934 as introduced by Senator Brownback. These amendments increased the penalties for ‘Obscene, Indecent and Profane’ broadcasts rose to \$325,000 per violation to a maximum of \$3 Million for continual repeats of the same violation.

6.2. Indirect penalties – the V-Chip

In July 1999, the US FCC introduced V-chip technology⁵ to television sets in the US. The V-chip system (described below) was originally intended to block violence on television. However, as the technology reads classification codes direct from the broadcast, it effectively blocks any unwanted classifications.

The V-chip is a technology that lets parents block television programming they don't want their children to watch. The V-Chip

³ See US Federal Communications Commission website at: <http://www.fcc.gov/eb/oip/process.html>

⁴ Text of the Act available at: <http://www.congress.org/congressorg/bill.xc?billnum=S.193&congress=109>

⁵ V-chip FAQ available at: <http://www.fcc.gov/cgb/consumerfacts/vchip.html>

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electronically reads television-programming ratings and allows parents to block programs they believe are unsuitable for their children. (Ratings appear in the corner of your television screen during the first 15 seconds of a program and in TV programming guides). This rating is encoded into the program, and the V-chip technology reads the encoded information and blocks shows accordingly. Using their remote control, parents can program the V-chip to block certain shows based on their ratings.

The effect of the V-chip technology and the heavy fines in the Communications Act has undoubtedly affected the mindset of producers of prime time programs.

Selling programs into the US market, producers will want to be certain that their programs will be classified in such a way that a) consumers will not block the program with V-chip and b) that broadcasters will be confident that they will not find themselves in breach of the Communications Act.

With ratings driving advertising return, the financial risk attached to both a breach of the code and reclassification out of prime time seems to provide a strong motivation for compliance.

A classification regimen that includes both direct and indirect penalties does work. Commercial broadcaster's reliance on advertising income will drive compliance to the code.

7. Recommendations

These recommendations, mindful of the terms of reference, are restricted to that part of the classification code that deals with coarse language. However, the recommendations themselves have equal application to the other streams (such as violence, sex and nudity etc.).

7.1 Broadcast notifications

Broadcasting the classification and warnings at the beginning of each program and following Ad breaks is simply not enough. Young people in particular 'channel surf' during Ad breaks across the available channels

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and are, therefore, more likely to encounter programs at a time when the warnings are not displayed.

Warnings should be displayed constantly. With the advent of watermarking for channel identification, it should not be difficult to include the standard warning abbreviations throughout every program.

7.2 Rewriting the code

The code has to provide a simple, common understanding of what is and is not acceptable. Parents need to have confidence that the common understanding of the abbreviated descriptions (G, PG, M, and MA) is being reflected in the code's description of what is acceptable and is also being upheld by the broadcaster.

We see no justification at all for accepting coarse language in the G classification. If the storyline is such that bad language is acceptable within that context, then it the subject matter itself should suggest a minimum classification of PG.

From this starting point, we argue that the progressively less restrictive codes should be modified in such a way as to remove ambiguity (as far as is possible) and to adopt the notional tolerance level of the preceding category (extant).

Classification	Description	Frequency	Context
G General	None	None	None
PG Parental Guidance	Very Mild	Very Infrequent	When absolutely justified by storyline or context
M Mature	Low Level	Infrequent	When justified by storyline
MA Mature Audience	Coarse	Infrequent [more frequent if justifiable]	When appropriate to storyline.

7.3 Complaints of breaches of the code

We recognise that investigations into complaints necessarily take time to process properly. However, there needs to be a better balance between the

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broadcaster's rights to a defence and the public need for a timely and effective complaints mechanism/resolution.

Free TV Australia and the ACMA will no doubt be wary of creating a system that would be open to abuse through frivolous or deliberately malicious complaints activism. However, we believe the current system needs an overhaul; including the creation of a form of penalty system that helps maintain a heightened level of vigilance amongst broadcasters.

7.3.1. Time frame.

Both the Industry Code of Practice and the Broadcasting Services Act 1992 (section 148) prescribe an unnecessarily drawn out system in respect to complaints handling. The broadcaster (licensee) has 30 days within which to reply to a complaint which can be extended by a further 10 days if the broadcast in question was taken on relay from another licensee. The Free TV Australia website suggests that the complainant need wait a full 60 days if no reply is forthcoming from the licensee before taking the matter to the ACMA.

This sort of time frame discourages people from pursuing their grievances and only serves to re-enforce the view that making complaints is a pointless exercise; further undermining public confidence in the system.

We believe that complaints should be able to be made either to the ACMA or the broadcaster immediately. The ACMA should immediately ensure that the broadcast licensee has a copy of the complaint and request a copy of the licensee's response to the consumer within 14 days. A broadcaster receiving a complaint should immediately forward a copy to the ACMA and undertake to reply to both within 14 days.

7.3.2. Complaints mechanism.

Action pursuant to an unsatisfactory response from the broadcaster should be able to be initiated by either the consumer or the ACMA if either party remains unsatisfied as to the broadcaster's response. This is an important principle as it serves to position the ACMA as an authority with power to act of its own accord – but only following consumer complaint – thereby ensuring, as far as possible, that the ACMA's actions reflect public sentiment.

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If the initial complaint relates to a television series or other regularly scheduled program and the complaint is clearly of a serious nature (as evidenced by the nature of the complaint and/or the number of complaints received) the program should be immediately temporarily reclassified and rescheduled to an appropriate time slot (for example: reclassifying *Ramsay* from M to MA and rescheduling at 9-00 pm or later). If the breach(es) would clearly put the program outside of the bounds of the MA classification, it should be immediately removed from scheduling.

In most cases, this would allow the broadcaster to continue to show the program while the complaint is being dealt with and, at the same time, delivering an immediate outcome in light of the complaints, pending a formal resolution.

Obviously, this system would be an inconvenience to broadcasters and may involve some financial loss. We remain convinced, however, that this type of system is warranted and, in an environment of heightened awareness amongst broadcasters, would rarely need to be used.

7.3.3. Financial penalty.

The Broadcasting Services Act 1992 needs to include a direct financial penalty for persistent breaches of the Industry Code of Practice.

We believe that a 'three strikes' policy would be a sufficient deterrent, with the ACMA providing clear guidance to broadcasters.⁶ Again, the educative nature of a deterrent, we believe, would be sufficient for broadcasters to increase their vigilance so as to avoid serious and repeated breaches.

Any compliance system needs both clarity in its classifications and the ability to enforce its codes. Reforming the Australian system to this end would deliver a renewed confidence amongst consumers; particularly parents.

⁶ The 60 Minutes program (mentioned at 3.1) would be a 'strike' in our opinion because of its provocative nature.

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8. Summary Statements

- Above all in this submission we stress that the code and its administration must work towards maintaining public confidence in the rating system.
 - With *Ramsay*, we have an example of a real life-type show that regularly pushes the boundary of decency in respect to language. In the case of episode 4, the show descended to new depths causing a public outcry. Programs in this 'real-life' genre will continually push at the edges of the public perception of decency by their very nature. They require closer scrutiny as does the code itself.
 - We believe that both *Ramsay* and *60 Minutes* provide the clearest argument possible for change and demonstrates that at least one network is prepared to take on social mores and the classification guidelines for its own ends. There is a challenge that the ACMA must meet head on if it is to maintain credibility.
 - There can be no excuse for vilification of this sort. We conclude that this episode should never have been aired on Australian television.
 - The classification statements in respect to language in all of the classification areas are too loose and subjective to provide an accurate understanding of what is and is not acceptable in programs. These statements also provide an easy defence for broadcasters which undermines the code and the classification system in general.
 - A classification regimen that includes both direct and indirect penalties does work. Commercial broadcaster's reliance on advertising income will drive compliance to the code.
 - Any compliance system needs both clarity in its classifications and the ability to enforce its codes. Reforming the Australian system to this end would deliver a renewed confidence amongst consumers; particularly parents.
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