

BROADCASTING STANDARDS AUTHORITY

STATEMENT OF INTENT 2014-2018

TE MANA WHANONGA KAIPĀHO
TAUĀKĪ WHAKAMAUNGA ATU
2014-2018





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STATEMENT FROM THE BOARD

1 May 2014

This Statement of Intent (SOI) sets out what the Broadcasting Standards Authority (BSA) intends to achieve or contribute to over the next four years and how it will manage its functions and operations to meet its intentions. This SOI is produced in accordance with section 141 of the Crown Entities Act 2004.

The broadcasting environment is one of dynamic change, with the media environment evolving rapidly. It is axiomatic that the regulatory structures set up in 1989 no longer fit the current environment. Nevertheless, we are charged with working with the current structures and adapting these, where possible, to work as effectively as we can.

Our focus therefore over the next four years is to ensure that the current system works as well as it can – both at BSA level and at broadcaster level – with a view to improvements underpinning any future regulatory system. Central to this, our decisions must continue to be robust and clear.



Peter Radich
Chair



Mary Anne Shanahan
Member



Leigh Pearson
Member



Te Raumawhitu Kupenga
Member

STRATEGIC OVERVIEW 2014-2018

VISION

Fairness and freedom
in broadcasting

PURPOSE

Our purpose is to oversee New Zealand's broadcasting standards regime so that it is fair to all New Zealanders, by balancing the broadcasters' right to freedom of expression with their obligation to avoid harm to individuals and society.

1. OUR PURPOSE

New Zealand is a modern democratic society. A robust broadcast media plays a vital role in our vibrant democracy. We all have a strong interest in protecting this cornerstone. But sometimes the media can harm individuals and society. A balance needs to be struck between broadcasters' right to freedom of expression and the harm that exercising this right may cause. This is where the BSA sits as it regulates the balance between freedom of expression and harm to New Zealand society in the broadcasting environment.

This right to freedom of expression is a fundamental right in our society. It is embodied in the New Zealand Bill of Rights Act 1990. The right belongs to the media and to individuals. But it is not unlimited. It must be justified in our free and democratic society. As a regulator, the BSA asks whether the benefits of freedom of expression in each case outweigh any harm caused. But in doing so, it also recognises that restricting free speech can be harmful in itself. This means that the threshold for upholding a complaint is high.

When undertaking all our work, whether setting standards or determining complaints, we must balance these two concepts justly – ensuring that broadcasters' right to free speech is supported whilst they fulfil obligations under the broadcasting codes to avoid harm and be fair.

2. WHO WE ARE

The BSA is a quasi-judicial tribunal established by the Broadcasting Act 1989 (the Act), tasked with overseeing New Zealand's broadcasting standards regime, and fulfilling the relevant functions under the Act.

We are jointly funded by government and through broadcaster levies to provide the public with a free, independent complaints service.

Broadcasting standards complaints are the responsibility of broadcasters and the BSA. In this co-regulatory environment, viewers and listeners who wish to make a formal complaint about a broadcast must first complain to the broadcaster concerned. Most are satisfied with the outcome. If the complainant is dissatisfied with the result they have the right to effectively 'appeal' the matter to the BSA through a referral. Complainants and broadcasters can then appeal BSA decisions in the High Court.

The BSA is an Independent Crown Entity. This status is a clear signal that its work should be conducted at 'arm's length' from the government. The government cannot direct or seek to influence the work of the BSA.

Members of the BSA are appointed by the Governor-General on the advice of the Minister of Broadcasting. Members have two roles: governance of the BSA and quasi-judicial determination of complaints. Members declare potential conflicts of interest and withdraw from consideration of any complaint where they are conflicted. Each member also signs a Declaration of Interest annually.

3. OUR STRATEGIC CONTEXT

3.1 Current environment

The media-consuming public has embraced the changing nature of the media environment. This is reflected in changing patterns of consumption, the rapid adoption of new modes of digital delivery and the provision of broadcast services in a range of languages reflecting the country's increasingly diverse population.

These changes have rendered aspects of the BSA's governing 1989 legislation out of date. We operate with an outmoded definition of 'broadcasting' that creates increasing difficulties around the scope of our jurisdiction.

Determining the appropriate shape of any future legislation is not straightforward. While it is widely acknowledged that the legislation is outdated, the complexity of the evolving media environment means there is no apparent impetus for legislative change.

We continue to operate in a tight fiscal environment. Government expectations are that we continue to review our services as part of a programme of delivery of better public services.

3.2 How will we respond to this environment?

Given the legislative status quo, the BSA must work within existing regulatory structures yet in a massively changing media environment that is increasingly outside the scope of our jurisdiction. We will continue to carry out our statutory responsibilities and remain relevant and responsive, making improvements to the system and structure to ensure that the current system works as effectively as it can. To do this, we must fully understand the areas in which we work and the expectations of the key stakeholders. We

will make sure that any improvements could underpin any future regulatory system. In particular, we will:

- Continue to improve the efficiency and effectiveness of our complaints processes and look for innovative ways to deliver our services.
- Continue to work on and improve the robustness of our decisions, present them with clarity and invite independent critique.
- Explore public attitudes to broadcasting standards and use these to inform our decisions.
- Work with broadcasters on the review of all the Codes to create principle-based Codes in a consumer-friendly codebook. This process is underway and will be a key focus in the first part of this period.
- Ensure we communicate effectively so that the public has easy access to information about the standards regime and how to complain.
- Provide advice to officials and fully engage in any review process, during the period, on proposed new regulatory structures from the perspective of our experience and expertise.
- Manage costs within existing funding streams.
- Continue shared service arrangements with NZ On Air, maximising the efficiencies of co-location with them (and another agency in the Cultural Sector), and look for other opportunities to work with, or share services with, others in the sector.

3.3 Our contribution to the Cultural Sector

We are part of the Cultural Sector and contribute to the sector's vision that New Zealand's distinctive culture enriches our lives. We contribute to the 'Engage' and 'Excel' outcomes by ensuring that the broadcasting standards regulation system is excellent – accessible, responsive and easily understood – to enable engagement.

As a regulator, however, we necessarily stand apart from the broader thrust of the Cultural Sector's outcomes to 'create' and 'preserve' which aim for cultural activity to flourish so that we are unique, distinctive and valued in a globalised world. Our role in the sector, that of keeping the balance between important rights, does, however, enhance New Zealanders' ability to enjoy their broadcasting media and culture.

4. STRATEGIC FRAMEWORK – OUR PERFORMANCE STORY

We have developed a strategic framework to reflect what we intend to achieve (the outcomes we seek), how we contribute to and influence those goals in the medium term, how we measure them, and how we intend to deliver on them through our services and activities.

The framework reflects the interrelationship of our services and activities as part of the system of regulation that we oversee, monitor, develop, make decisions in, and inform people about. It also shows how, together, these contribute to the impacts and outcomes we seek.

STRATEGIC FRAMEWORK

SECTOR VISION:	New Zealanders' distinctive culture enriches our lives
BSA VISION & PURPOSE	↑ OUR VISION IS FOR FAIRNESS AND FREEDOM IN BROADCASTING ↑
	Our purpose is to oversee New Zealand's broadcasting standards regime so that it is fair to all New Zealanders by balancing the broadcasters' right to freedom of expression with their obligation to avoid harm
OVERARCHING OUTCOME/GOAL	↑ What we intend to achieve: ↑
	New Zealanders have increased confidence that the broadcasting standards regime fairly balances the broadcasters' right to freedom of expression with their obligation to avoid harm
IMPACTS OVER TIME	↑ How we contribute and influence: ↑
	<ul style="list-style-type: none"> • A reduction in unjustified complaints from members of the public • Increased compliance with standards by broadcasters
MEASURE OUR IMPACT	↑ How we know we are succeeding: ↑
	<ul style="list-style-type: none"> • A reduction in the number of upheld and not upheld complaints • No proportionate increase in the number of BSA decisions overturned by the High Court on appeal • Improved public awareness of the existence of the broadcasting standards system
ACTIVITIES & SERVICES	↑ How we deliver: ↑
	<div style="display: flex; justify-content: space-around; margin-top: 10px;"> <div style="border: 1px solid black; padding: 10px; width: 30%; background-color: #e6f2e6;"> <p style="text-align: center;">OVERSIGHT AND DEVELOPMENT OF THE BROADCASTING STANDARDS SYSTEM</p> <p>We oversee the broadcasting standards regime, work with broadcasters and others to set clear broadcasting standards, and work to improve the complaint handling system at all levels by addressing systemic issues, reviewing codes, issuing practice notes, and undertaking research</p> </div> <div style="border: 1px solid black; padding: 10px; width: 30%; background-color: #e6f2e6;"> <p style="text-align: center;">COMPLAINTS DETERMINATION</p> <p>We receive complaints about breaches of the Codes of Broadcasting Practice and issue robust, soundly reasoned, timely decisions that reflect the boundaries between freedom of expression and harm</p> </div> <div style="border: 1px solid black; padding: 10px; width: 30%; background-color: #e6f2e6;"> <p style="text-align: center;">INFORMATION AND COMMUNICATION</p> <p>We provide clear, user-friendly information about the broadcasting standards system and our decisions</p> </div> </div>

4.1 What do we intend to achieve?

Our overarching goal (outcome) is that New Zealanders have increased confidence that the broadcasting standards regime fairly balances the broadcasters' right to freedom of expression with their obligation to avoid harm.

The BSA will contribute to and influence this goal by having an impact over time in two ways:

Reducing unjustified complaints

The BSA will reduce unjustified complaints by providing information that enables viewers and listeners to respond to broadcasting in a more informed manner, understand how to make quality complaints to the right place, and have trust and confidence in the robustness of BSA decisions and its processes.

Increasing broadcaster compliance

The BSA will work to increase broadcaster compliance by working on the development and enhancement of the broadcasting system – where appropriate with broadcasters – so that:

- the standards and Codes are robust and fit for the operating environment and reflect New Zealand's diversity
- broadcasters understand their obligations
- broadcasters can resolve more complaints earlier.

4.2 How will our activities and services contribute to what we intend to achieve?

4.2.1 Strengthening the broadcasting standards regime

The broadcast media reaches into the lives of New Zealanders. It informs us and entertains us. Broadcasters have agreed to meet certain standards as they do this. Some of these are prescribed by the Broadcasting Act, others are set out in the Codes.

The BSA monitors these standards on behalf of New Zealanders in a number of ways. Our key activity is complaints determination but this doesn't occur in a vacuum. We provide two other critical services and activities to support and enhance the broadcasting content regulation system – oversight and development of the broadcasting standards system, and the provision of information about the system and our decisions.

All three parts interrelate, build on and strengthen the system as a whole. For example, decision making informed by research applies and interprets standards, which in turn informs broadcasters and viewers about the balance between freedom of expression and the rights of the media as against the rights and expectations of New Zealanders. Determining this balance, in turn, can impact on viewer behaviour and broadcaster compliance.

In this way, all our activities contribute to and/or influence our impact over time: through reduction of unjustified complaints and by increased broadcaster compliance.

4.2.2 Our three interrelated activities and services

Complaints determination

Determination of complaints is the critical point of the regulation system where we aim to strike the balance between the right to freedom of expression and the responsibility to avoid harm.

We will ensure our decisions are robust and soundly reasoned. We will make the boundaries between the right to freedom of expression and the responsibility to avoid harm increasingly clear through well-articulated decisions. We will ensure that our decisions are presented clearly and are easily understood by readers.

We will continue to assess the clarity, robustness and fairness of our decision making by seeking independent reviews and also by litmus testing our decisions with members of the public.

Our processes for determining complaints are well developed and we will constantly challenge ourselves to refine and improve these systems.


Oversight and development of the broadcasting standards system

Notwithstanding the reality that the regulatory system is dated and could be under further review at any stage, business must continue. We will, however, continue to adapt our processes, within the boundaries of legislative restraints, to best meet the needs of New Zealanders and underpin any future regulatory system.

The BSA is effectively an appeal body. Broadcasters deal with complaints in the first instance. This means that the content regulation system depends on their complaints processes working effectively and efficiently to minimise complaint referrals to us.

Our role is to support broadcasters in this area, provide them with information, and improve processes between us. Strong relationships with broadcasters are crucial to performing well. We will continue to have regular contact with representatives of the broadcasters to facilitate these relationships, and to work on system improvements.

Work on reviewing the Codes will continue and be a priority in the first part of this period. The Codes need review in the current environment and it will be of value to consumers and broadcasters for us to modernise and update them into a user-friendly principles-based format that allows for the range of delivery platforms. We will continue to provide practice guidance on aspects of Code interpretation or on the way we carry out our processes. Such guidance will continue to be developed in consultation with the broadcasters and other stakeholders.



We will provide advice to officials on the regulatory environment. We will also commission and publish research that will inform the application and development of broadcasting standards, and ensure that our decision making and policy are informed by diverse community attitudes and opinions. We will consult with broadcasters and other stakeholders on this research.

Information and communication

We will continue to provide useful information to the public to ensure those who choose to make a complaint understand how to go about it.

At a minimum, the public needs to be aware that there is a broadcasting standards system, have some idea how to go about finding out how to complain, and know that the BSA exists. There are a number of ways that this occurs – for example, through the broadcasters’ responsibility to advertise their complaints function (which we audit every two years) and also through media engagement in our decisions.

The first point of contact for most of those who want to make a complaint is our website. The website is the critical tool for searching our decisions and helping viewers and listeners understand the broadcasting regime. We will keep it evolving so it provides clear information to enable New Zealanders to understand their rights, manage their media use within the agreed standards, and make quality complaints.

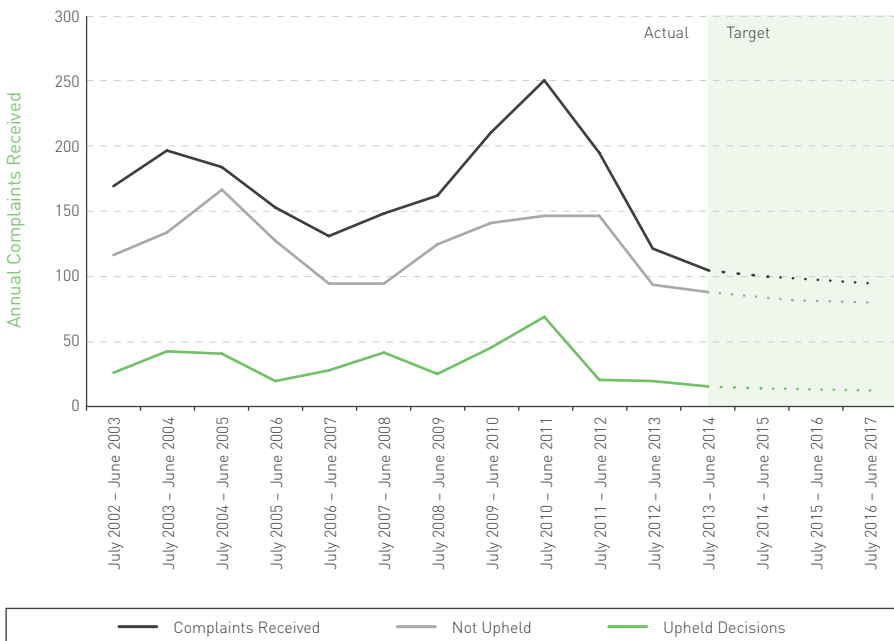
4.3 How do we know that we are having an impact?

We have identified three key measures to determine our impact over time through our three interrelated activities and services. Many factors will influence the medium-term outcomes and goals, a number of which are outside our control. We cannot achieve these outcomes alone – it will take the involvement and focus of all our stakeholders, which includes broadcasters and the public. These outcomes are also subject to changes in the broadcasting environment generally.

The measures we have chosen are themselves open to different interpretations, particularly our quantitative measures. For example, a reduction in complaints could mean less awareness or confidence in our decisions, or that there is less consumption of traditional broadcasting. Alternatively, it could mean that the system is working very effectively and only threshold and challenging decisions are reaching us which is the goal we are aiming for.

Notwithstanding their potential ambiguities, we think, taken together, that the following three measures provide a good indication of whether the broadcasting standards system is working as efficiently and effectively as it should.

FIG 1. BSA System Performance Indicators



Measure 1 – A reduction in the number of complaints both upheld and not upheld, with a consequential decline in overall complaint numbers

When the system is working well:

- the number of **upheld** complaints declines over time which implies broadcasters breach the Codes less often
- the number of **not upheld** complaints declines which implies that members of the public better identify breaches and make better quality complaints
- the total number of complaints declines reflecting effective broadcaster complaints processes and improvements in the above two indicators. This in turn means lower BSA costs.

In this well-functioning system, the public will manage their viewing and their children's viewing within the standards regime and will make fewer complaints. They will understand better how – and where – to complain, so trivial complaints will be reduced. The system (which includes broadcasters' complaints systems as well as ours) will enable easier disposal of trivial, frivolous and routine complaints.

All broadcasters will understand their obligations and resolve complaints effectively so that fewer complaints come to the BSA. Those that are referred to the BSA will be increasingly at the boundaries of freedom of expression and the avoidance of harm, and therefore more challenging.

Since identifying these measures in 2012 we have seen a reduction in complaints overall. The ratio of complaints not upheld, and upheld, remains similar. Leaving aside the anomalous numbers in 2010/11 (where

there were a number of complaints about the same programmes), the figures are trending down. We see this as a positive indicator that the system is working well. We will continue to monitor these figures annually.

Measure 2 – No proportionate increase in the number of BSA decisions overturned by the High Court

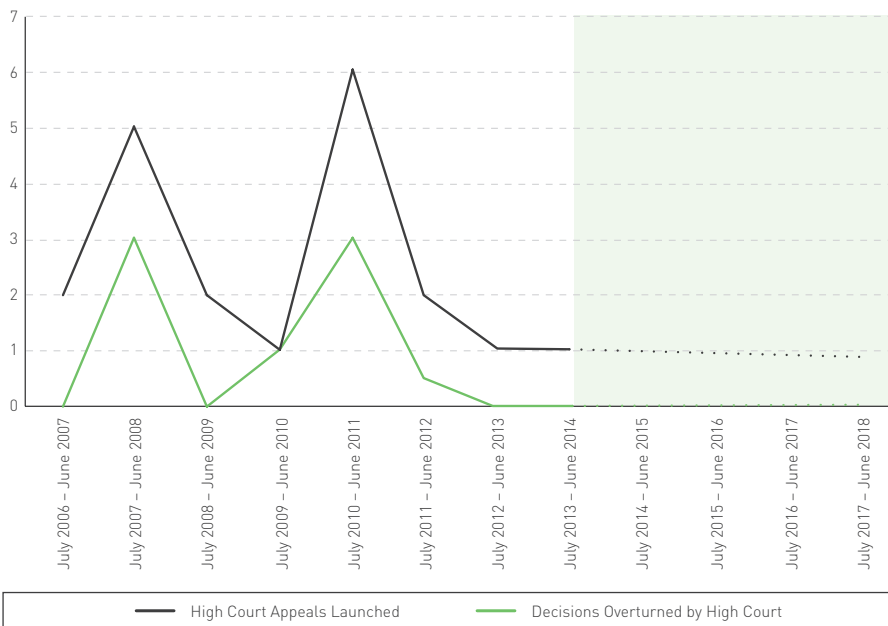
BSA's decisions can be, and sometimes are, appealed. This is a valuable part of the process as it is important for parties to have recourse to the courts. Valuable jurisprudence is generated through the appeal process.

Over the years the number of decisions overturned by the High Court has been low. We will continue to measure, over time, the number of appeals we receive against our decisions, and particularly the number of decisions overturned by the High Court. A real increase in overturned decisions, particularly if they go to matters of process, would be a concern and indicate that our decision-making process may need improvement. If they go to substance, they may indicate that the BSA is not in tune with community standards as assessed by the High Court.

For that reason, High Court decisions are an important overall indicator of how the broadcasting standards system balances the broadcasters' right to freedom of expression with their obligation to avoid harm.

The drop in appeals lodged and upheld over the last two years is a positive indicator that the system is working well. This may reflect the evolved decision-making process deployed by this Authority as it considers the Bill of Rights. We will continue to monitor this.

FIG 2. High Court Appeals



Measure 3 – Public awareness that individuals can make a formal complaint about television and radio content is increased to, and maintained at, over 90%

Every two years we will complete a survey measuring the percentage of New Zealanders aware of the BSA, aware that they can make a formal complaint, and able to identify a course of action which would lead them to find out about the correct process for making a formal complaint.

We will also monitor a breakdown of these figures by age, region, ethnicity and gender. The value of measuring public awareness of these elements is that it demonstrates

that New Zealanders know they have rights in this area. Any significant decline in awareness would signal that we may need to take steps to raise awareness.

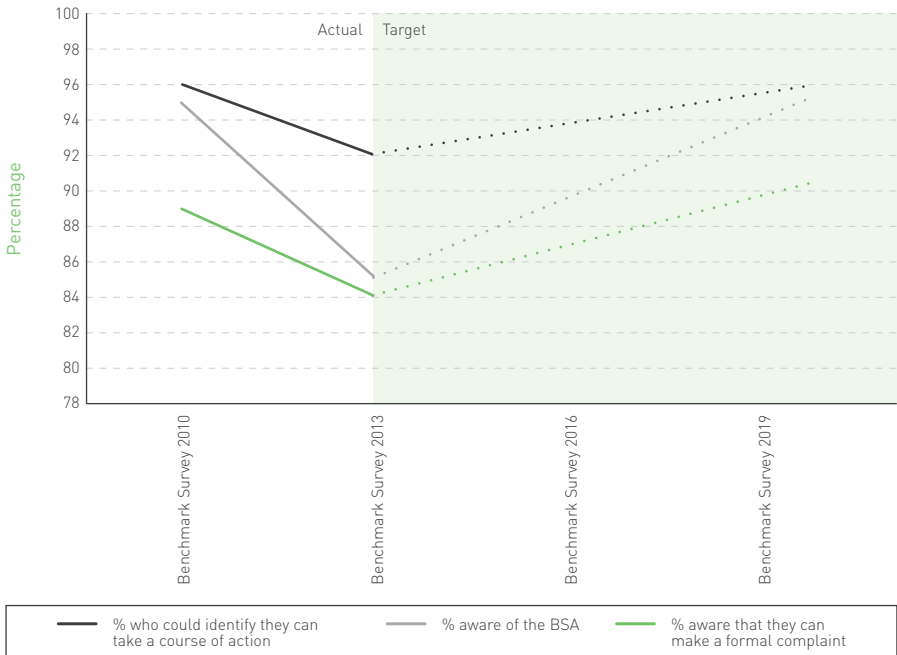
A survey completed in 2013 showed:

- 85% of New Zealanders are aware that they can make a formal complaint about television and radio content (compared to the 89% benchmark of 2010)
- 92% of New Zealanders could take a course of action which would lead them to finding out about the correct process for making a formal complaint (compared to the 96% benchmark of 2010)

- 85% of New Zealanders are aware of the BSA (compared to the 95% benchmark of 2010).

The slight fall in awareness in 2013 does not take away from a very high level of awareness generally but we will continue to monitor this. Our target remains that over 90% of New Zealanders are aware that they can complain about broadcasting, can find out how to make a formal complaint, and know about the BSA.

FIG 3. Public Awareness



4.4 Overall performance and cost analysis

4.4.1 Performance summary

FIG 4. BSA Total Costs and Complaints Received



The BSA also measures its overall performance against expenditure and will provide updates of this summary in its Annual Report and in setting annual performance expectations. Over time this data provides rich information about the correlation between expenditure and overall performance of the broadcasting standards system. To 2013, BSA expenditure appears correlated with the performance of the broadcasting standards system. Increasing expenditure was matched by decreasing complaints about broadcasting breaches as seen to the year 2006/07. The increase in

complaints received over those years was largely made up of an increase in complaints not upheld, including more routine and trivial complaints. This suggests that when people want to complain they need to be better able to understand the basis on which they can complain, and how to complain, so that they make higher-quality complaints. The reversal of expenditure trend and system performance in the year 2007/08 is significant. A reduction in expenditure was matched by increased complaints.

There are other reasons for increased numbers of complaints, such as the ease

with which people can complain more quickly through email and the internet (and organise to complain – through social media, for example). This makes it vital that the information we provide about the standards system (such as via our website) makes it clear what is necessary to make a quality complaint.

The graph on page 16 shows continued reduction in both costs and complaint numbers. Given the expectations of an efficient public sector, we will continue to focus on cost reduction, complaint process efficiencies and improving our interface with the standards system.

4.4.2 Costs of BSA decisions

Since 2007/08 our total costs and unit 'decision' costs have declined from a cost spike between 2004 and 2007. This spike may well have been caused by normal variation in complaint volume, and management has done well to bring costs back to the pre-spike levels. However, the current trend now shows the unit cost of individual decisions has increased. This is because, in line with our stated performance goals, we have fewer complaints and some of these are extremely complex and therefore time-consuming. We also have some overall fixed costs.

FIG 5. BSA Cost Trends



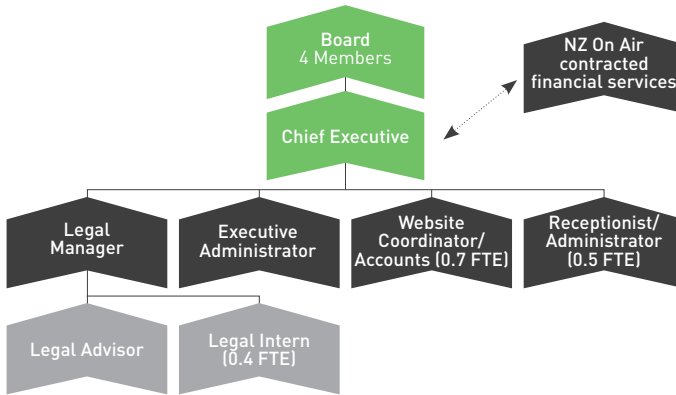
Note: This analysis uses 2013 constant \$ for fair comparison over the 10-year period. It is based on a 2.5% pa inflation average for each year.

4.5 Organisational capability

4.5.1 Structure

The BSA is a small organisation and we foster a collaborative culture that values the input of all participants. We encourage

and have a positive, flexible culture and have a clear appreciation of governance and management distinctions.



4.5.2 Capability

In planning for capability and risk we take into account that we are a small organisation that comprises specialist staff.

We ensure that we actively monitor all the factors that affect our service delivery. This includes, but is not limited to, complaints numbers and complexity; staff productivity; staffing changes; synergies between board, management and staff; state sector compliance requirements; and funding.

We are also aware that complaint numbers have typically risen and fallen over time and that the current reduced level of complaints is not guaranteed to continue as it is influenced by factors outside our control. Our capability planning must ensure we remain able to continue to carry out our core services allowing for fluctuations in numbers.

The measures we use to assess organisational health and capability are

set out in the Statement of Performance Expectations. Our objectives are as follows:

- Staff employment policies focus on retention and development of skilled, knowledgeable, adaptable, efficient team players with the tools, information and training necessary to perform to a high level.
- We maintain, seek and develop ongoing opportunities for agency collaboration and shared services in the Cultural Sector (or broader public sector) if appropriate.
- Our infrastructure is fit for purpose.
- Our office environment and equipment are safe and well maintained.
- Equal employment opportunity principles are incorporated in staff selection and management, to achieve as diverse a workforce as possible within the limits of our small size.

DIRECTORY

Members

Peter Radich of Blenheim, Chair
Mary Anne Shanahan of Auckland
Leigh Pearson of Wellington
Te Raumawhitu Kupenga of Wellington

Staff

Susan Freeman-Greene	Chief Executive
Patricia Windle	Legal Manager
Miro Booth	Legal Advisor
Wei-Wei Ng	Legal Intern (part-time)
Jane Hansen	Executive Administrator
Margaret Haughey	Website Coordinator/Accounts Assistant (part-time)
Trish Cross	Receptionist/Administrator (shared with NZ On Air)

Other

Financial services contracted from NZ On Air

Contact Details

2nd floor, New Zealand Film Commission Building
119 Ghuznee Street
PO Box 9213, Wellington 6141, New Zealand

Telephone: (04) 382 9508
Freephone: 0800 366 996
Facsimile: (04) 382 9543
Email: info@bsa.govt.nz
Website: www.bsa.govt.nz



WWW.BSA.GOVT.NZ

LEVEL 2 | 119 GHUZNEE STREET
PO BOX 9213
WELLINGTON 6141 | NEW ZEALAND
[04] 382 9508 | FREEPHONE: 0800 366 996