

Broadcasting Standards Authority: Code Review 2015

Public Consultation

Part 1: Introduction

About the Broadcasting Standards Authority

The Broadcasting Standards Authority (BSA) is an independent body that oversees the broadcasting standards regime in New Zealand. We do this by determining complaints that broadcasts have breached standards, by undertaking relevant research and also by providing information about broadcasting standards.

Code review: background

As a key part of its core functions, the BSA collaborates with broadcasters to develop codes of broadcasting practice that apply to all television and radio broadcasters in New Zealand. We are currently undertaking a review of our three main codes – Free-to-Air Television, Pay Television and Radio. The consultation document for this review was drafted with input from a working group of broadcaster representatives. The BSA also consulted with the public on the draft codes and invited submissions over a six-week period (from 20 July to 31 August 2015).

What we consulted on and how

The code review is limited by the BSA's governing legislation, the Broadcasting Act 1989. This means that the code review only covers the 11 standards set out in the Act as they apply to television and radio. The review does not cover regulation of advertisements, internet content or the general quality of programmes.

Our objective in reviewing the codes has been to try to ensure a modern, principles-based and consistent set of codes that are as user-friendly and informative as possible. To this end we collated the three separate codes into one codebook. We included:

- Introductory sections setting out the framework and environment that the codes of broadcasting practice operate in
- Commentary on each standard
- Definitions of frequently used terms and phrases
- Three codes with updated guidelines
- Updated guidance on the complaints process, privacy, distinguishing fact and opinion, the BSA's powers to decline to determine a complaint and costs awards.

The purpose of public consultation during this code review was to enable all interested parties to have a say in the development of broadcasting standards, and to ensure that these standards reflect the general values and expectations of our diverse New Zealand society.

We sought general comment from the public about:

- The standards and codes and/or
- The complaints process and/or
- The overall design and content of the codebook.

We received public submissions during the consultation period via a purpose-built page on our website, email and paper mail.

Part 2: Submissions

Overview

The BSA received 21 submissions. Submissions were made by a variety of individuals and organisations, including previous complainants, lobby groups and academics. Submitters commented on specific aspects of the draft codebook as well as generally commenting on the BSA's role and functions, the complaints process and the broadcasting/media landscape. All submissions were thoughtful and considered and we greatly appreciate the time and effort taken by submitters to participate in our code review.

Most submissions commented on the Free-to-Air Television Code, though many submissions raised issues applicable to all of the codes. The standards most frequently raised in the submissions were Discrimination and Denigration, Violence, Balance and Privacy.

The majority of submissions were generally supportive of the proposed changes to the codes and indicated the draft codebook was clear, consistent and easy to understand. In the submissions received there was a general tenor in favour of more regulation in some areas and an extension of the BSA's powers. For example, several submitters felt the BSA should be able to take action in certain situations without receiving a complaint. Additionally, while most submitters acknowledged the importance of freedom of expression, some felt the draft codebook leaned too heavily in favour of this freedom at the expense of the protection of vulnerable members of society and the maintenance of professional standards of broadcasting.

There were no clear themes that stood out across submissions and the issues raised were relatively varied and isolated. That being said, several important points were raised that deserve mention.

Length of complaints process

A few submitters noted that the overall complaints process was lengthy, and were especially concerned about broadcasters taking the maximum time to respond to complaints or allegedly not adhering to the legislative time limits.

Audience diversity

The important question of 'freedom of expression for who?' was discussed in several submissions. These noted that viewing (and listening) audiences encompass multiple world views, and this can have repercussions for the Good Taste and Decency, Fairness, Discrimination and Denigration and Balance standards in particular. Submitters were concerned that broadcasters give preference to certain sections of the audience over others, and that an alternative, but valid perspective may be dismissed as overly sensitive. That the Balance standard only applies to 'controversial' issues was also regarded as problematic, as submitters argued there is often a need to include balancing and non-mainstream viewpoints on non-controversial issues. Several submitters noted it was always possible and desirable to seek competing views on an issue, and considered that a Māori point of view was noticeably absent in mainstream broadcasts.

Gratuitous violence

Several submitters also felt that there was too much gratuitous violence shown on television, and that the current codes did not adequately deal with the gendered aspect of violence and violence in sports.

Privacy: 'particularly vulnerable' people and social media

Privacy was seen as another area of concern for some submitters, especially the need to protect the privacy of those in vulnerable or traumatic situations. The developing role of social media was also discussed, and the need for guidance around the disclosure of information sourced online.

Part 3: Response to submissions

We have carefully considered all submissions and endeavoured to respond to submissions in one or more of the following ways:

- Responding to each submission individually, fully addressing the points raised
- Amending the draft codebook
- Taking action outside of our code review.

In general terms, our consideration of submissions included determining whether the issues raised: were within the scope of our code review; were already covered by the codebook as drafted; and/or were consistent with our general approach to our code review. Where appropriate, we have amended the codebook to: clarify points of uncertainty; include relevant considerations that were previously absent; and/or clarify the Authority's approach to a particular issue. Our consideration of submissions is set out in further detail below.

Outside of scope

Some submissions raised issues that are more properly addressed outside of our code review. Other action we propose to take as a result of issues raised includes updating our information about the complaints process, in particular: clarifying the overall length of the process; undertaking research into new areas; and increasing public awareness of both our role and functions and broadcasting standards in general. We have also taken on board any suggestions about how to better conduct public consultation.

Several submitters made suggestions that would require substantial amendment to our governing legislation, for example that we should be able to take action without receiving a complaint or be able to consider multiple broadcasts at once. Up until such time as our legislation is amended by Parliament, we are limited to working within the current wording and scope of our Act.

Submissions about the submitter's personal experience in bringing a complaint to the BSA are unable to be adequately addressed by amending the codes. We regularly undertake a survey of all complainants as a means of looking for continued improvements to our processes, and this is the appropriate avenue for consideration of these issues.

Matters already addressed in the draft codebook

Where a submission raised issues already dealt with in the codebook as drafted, the Authority's jurisprudence (in other words, the practice of determining complaints and issuing decisions) will play an important role in addressing these issues.

General approach

Our general approach to reviewing our codes has been to try to ensure a principled, consistent and flexible set of standards and guidelines. This flexibility is important to maintain, as the codes need to be able to deal with a wide variety of situations. While they need to be specific enough to provide

guidance for broadcasters and the general public, they must avoid a level of specificity that is limiting and unintentionally exclusionary.

Amendments to the draft codebook

We have amended the codebook by:

- Including our commitment to Treaty of Waitangi principles in the section on *The BSA*;
- Acknowledging the special significance of Te Reo and Māori culture in New Zealand's multicultural society in the *Broadcasters* section;
- Including the importance of a child's 'social' development in the commentary on Children's Interests;
- Including our expectation that broadcasters provide information to viewers about the availability of filtering technology in the commentary on Children's Interests;
- Amending the commentary around the accessibility of violent material on television;
- Clarifying what amounts to 'news, current affairs and factual programming' in the Accuracy commentary;
- Clarifying the meaning of 'public interest' in the Privacy commentary;
- Amending a guideline to the Fairness standard to include covert recording devices in the Free-to-Air Television and Pay Television Codes;
- Including the broadcaster's option to extend their response time to 40 working days in the diagram, *Complaints Process Step-by-Step*;
- Clarifying how long the process takes in the *Guide to BSA Complaints Process*;
- Including guidance around the factors taken into account when the Board decides whether to impose an order in the case of an upheld complaint in the *Guide to BSA Complaints Process*.

Broadcasting Standards Authority

22 December 2015