

2018 LITMUS TESTING OF BSA DECISIONS

THE FAIRNESS STANDARD

“Broadcasters should deal fairly with any person or organisation taking part or referred to in any broadcast.”

56 participants in online and in-person focus groups across New Zealand considered four recent BSA decisions on complaints that certain television programmes had breached the Fairness Standard. This is what the participants told us.

We asked:

**Does the public think the BSA is making the right decisions on Fairness?
 Are the BSA's decisions reasonable reflections of community views/public attitudes?**

Focus groups said:

- » Most participants agreed with the BSA's decisions for all four clips.
- » An average of 90% of participants agreed the BSA's decisions were acceptable, good or very good.
- » There were mixed views about the treatment of Winston Peters in the *Newshub* item. Participants felt Mr Peters was treated unfairly notwithstanding his role as a public figure and politician. Participants felt all New Zealanders should have the same rights to privacy and fair treatment, irrespective of status.
- » Initially participants did not feel the individuals featured in *The Block* and *Story* broadcasts were treated unfairly. But over 90% agreed with the BSA decisions taking into account BSA's reasoning.

DECISION TESTED	% WHO WOULD UPHOLD THE FAIRNESS COMPLAINT	% WHO RATED BSA DECISION AS ACCEPTABLE/GOOD/VERY GOOD
Tiler on <i>The Block NZ: Villa Wars</i> (15 September 2016) <i>Complaint Upheld on Fairness</i>	63%	94%
Story item about Unconscious Bias (15 December 2016) <i>Complaint Upheld on Fairness</i>	71%	91%
Newshub item about Winston Peters (16 February 2018) <i>Complaint Not Upheld on Fairness</i>	61%	81%
Seven Sharp item about 'herb detectives' (19 April 2017) <i>Complaint Upheld on Fairness</i>	98%	93%

We asked:

What does the public think about the Fairness Standard?

Focus groups said:

- » ***Fair treatment in broadcasting requires informed consent and/or informed participation in the preparation of any programme.*** Focus groups were concerned about people being filmed and broadcast without their knowledge or consent – even if they are in a public place (*Story*). Focus groups were concerned about an interview with an innocent bystander who was not told she was being filmed and whose consent to appear on television was not obtained (*Seven Sharp*). The fact the tiler on *The Block* had not given his consent was a key reason why participants felt he was treated unfairly.
- » ***Offering individuals featured in a broadcast an opportunity to comment for the programme / to defend themselves is important.*** This is particularly important where the individual is incidental to the main focus of the item and is unknowingly pulled into the story (eg, *Story*, *Seven Sharp*).
- » ***The task of ‘balancing’ the important right to freedom of expression against broadcasters’ obligation to avoid causing harm, is a complex task for both broadcasters and the BSA.*** Participants also acknowledged different people and different cultures may have different views of what is acceptable, adding to the complexity of decision-making.
- » Participants generally believed the BSA is making the right decisions under the fairness standard, but felt the orders made were too light and that compensation should have been awarded. [NB, the Broadcasting Act 1989 does not give the BSA power to make monetary awards for breaches of the Fairness Standard.]

This means:

- » The BSA is making good decisions under the Fairness Standard which reflect community views.
- » The Guidelines for applying the Fairness Standard in the *Broadcasting Standards in New Zealand Codebook* reflect the issues identified by the focus groups about the importance of informed consent and the opportunity to comment on adverse statements made about a person in a broadcast.
- » The BSA recognises some of the concepts and terminology applied in decision-making are complex and need to be carefully explained (eg, what is in the ‘public interest’, the right to freedom of expression).
- » The orders available to be made by the BSA are light. This can only be redressed through legislative change.