

Community Voices

Earlier this year the BSA advertised for people interested in participating in its inaugural Community Advisory Panel (CAP).

We were thrilled to have been contacted by nearly 160 people throughout New Zealand indicating their interest, from which ten have been shortlisted. Final selection will be made in May and we will profile the CAP members in our next newsletter.

New Advisory Opinion: Costs Awards

The BSA is empowered by the Broadcasting Act to award costs to successful complainants. Mostly, costs are awarded where the complainant has made a justifiable decision to hire a lawyer. In some cases, no costs will be awarded; in others a degree of reasonable reimbursement may be made.

The BSA has issued an Advisory Opinion setting out the principles it will follow when considering an application for an award for costs. This is to ensure consistency and transparency. The Advisory Opinion can be viewed on our website.

NEW public attitude survey on broadcasting standards

The BSA is set to release the findings of a major public attitude survey on the good taste and decency, fairness, balance and accuracy standards.

One chapter of the new book, *Freedoms and Fetters: broadcasting standards in New Zealand*, was prepared from the findings of a face-to-face survey with 500 New Zealanders.

BSA Chair, Joanne Morris, said "I was a member of the Authority when we conducted the first good taste and decency public attitude survey in 1993. It was repeated again in 1999,

and this third time means that we can now look back over thirteen years of data. It seems clear people's attitudes are changing to swear words and to sex and nudity on TV."

"*Freedoms and Fetters* looks at new areas of public attitude research as well," said Ms Morris. "There is a special case study on talkback radio, and we also used focus groups to discuss balance and fairness in factual programmes. Participants grasped some quite difficult concepts

in a common-sense way, and everyone had an opinion!"

"Balance, fairness and accuracy are important to New Zealanders when it comes to news and current affairs," said Ms Morris. "The most important standard is accuracy, closely followed by considering the interests of children."

Another key finding is that the use of 'bad language' is considered slightly more acceptable on television since the last survey in 2000. The 'f' word has changed the most in that period with a 12% higher level of acceptability in AQ-rated programmes.

"The Authority is delighted to have supported this research," said Ms Morris. "In particular, discussing issues of fairness and balance in broadcasting is always complex, and we think that this study provides an important new reference."

The book, published by Dunmore Press, will be launched at a function in Auckland on 23 May and available after that from the BSA. If you would like to buy a copy please cut out the order form below and post it to us enclosing your cheque.

Freedoms and Fetters: broadcasting standards in New Zealand, Broadcasting Standards Authority

Please send me copies of *Freedoms and Fetters* at NZ\$19.95.

Price includes GST and p&p.

I enclose a cheque for \$

Name:

Address:

.....

.....

Post to: Broadcasting Standards Authority, PO Box 9213, Wellington, NZ

0800 Number

The Broadcasting Standards Authority's 0800 number is

0800 366 996

It has a recorded message which explains the complaints process.



Quarterly

Number 30, May 2006

This edition of *BSA Quarterly* contains a call for submissions on a new Pay TV Code. We announce the launch of a new BSA research publication *Freedoms and Fetters*. We update on the formation of the BSA's inaugural Community Advisory Panel and summarise some of the decisions issued in the quarter January to March 2006.

Proposed new Pay TV Code of Broadcasting Practice: public submissions sought

The BSA, in conjunction with Sky Television (representing pay TV operators), has released a proposed new Pay TV Code for public comment.

The existing Code was created in 1993 and last significantly revised in 1999 (the liquor standard was added in 2004). Since 1999 the broadcasting and technology landscape has changed significantly. The BSA initiated this review as part of its ongoing Code review programme, where broadcasting codes are re-evaluated every five years.

The challenge for this review has been to reflect the current pay TV environment and to create a document which is sufficiently flexible to survive further technological change, while still complying with the definition of 'broadcasting' in the Broadcasting Act 1989. That definition may need to be reconsidered in due course.

The existing codes are already obsolete in several areas. Currently there are two codes – the Standard Code covers general pay TV channels, while the Advanced Code covers pay-per-view content. At Appendix 2 of the draft Code is a comparison of the provisions of the two existing codes, revealing a degree of inconsistency which has emerged over time.

The draft new code is a single document covering all forms of pay TV content. The Code maintains the original baseline position, that pay TV enjoys a less restrictive environment than free-to-air TV. This is because of the choice subscribers make to receive the service, and also the special protective mechanisms available on digital services in particular. The underlying principle balances adult freedom with responsibility to the vulnerable, in an environment where over 650,000 of New Zealand's 1.5 million households receive a pay TV service. Formal complaints to the BSA about pay TV content are rare.

Each standard in the draft new Code is aligned to a requirement of the Broadcasting Act, and each standard is accompanied by succinct guidelines for interpretation.

What hasn't changed:

- the watershed requirement for 18 content on UHF services
- the classifications and warnings (based on cinema classifications)
- restrictions on the promotion of liquor (which are the same for free-to-air TV and radio)
- privacy principles (currently under separate review).

Main changes:

- one code covers all pay TV content
- advances in filtering technology (eg parental lock systems with PIN access) mean that subscribers opt-out of restricted content, rather than having to actively elect to receive it
- protective mechanisms for child viewers are clearly set out
- explicit adult sex content classified 18 (like that on the Playboy and Spice channels) is restricted to pay-per-view or premium access only, to avoid accidental viewing
- the 'pass through' channel environment is acknowledged where possible (channels like CNN, BBC World and the History Channel which have little or no domestic editorial intervention). However pay TV broadcasters are still responsible for ensuring this content complies with the code
- pay TV broadcasters will actively and regularly provide information about classification and filtering technology used to protect viewers.

Public comment on the draft Code is now sought. Submissions will be discussed by the Authority at its June board meeting, and a new Code will be approved by the Authority as soon as practicable after that meeting, depending on the nature and range of submissions received. The BSA acknowledges the constructive and helpful attitude taken by Sky TV in discussions to date.

Submissions should be emailed to info@bsa.govt.nz. The deadline for comments is Monday 22 May.

A copy of the draft Code is on www.bsa.govt.nz

Directory

The current members of the Broadcasting Standards Authority are:

Joanne Morris (Chair), Tapu Misa, Diane Musgrave and Paul France.

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Decisions

The BSA issued 19 decisions between January and March 2006. Decisions of interest included the following:

Privacy

In July 2005 TVNZ broadcast an item on *20/20* about a dog breeder and the conditions in which he kept dogs on his rural property. The man willingly gave an interview for that programme, but when TVNZ wanted to follow up on the original story, he made it clear that he no longer wished to deal with them.

In preparing the follow-up, a TVNZ reporter went to the man's property with a film crew. The man was not at home, but the reporter and crew walked across the property and discovered and filmed a burial pit about 75 metres from the house which contained dead dogs.

The man complained that by entering his property without consent, and filming and broadcasting the footage of the dead dogs, TVNZ had breached his privacy. In particular, he relied on privacy principle (iii) which protects against the invasion of a person's interest in solitude and seclusion.

In determining this complaint, the BSA addressed novel aspects of the interpretation of principle (iii). Specifically, it addressed whether a person's privacy could be breached by an unauthorised entry onto their property, even if they were not present at the time. The BSA concluded that principle (iii) could apply to such situations, but that there would have to be something more than a simple intrusion. The film crew, while on the property, would also have to interfere with something private to the landowner. The intrusion would also need to be offensive to a reasonable person.

A majority of the BSA considered that in this case TVNZ's actions had breached the complainant's privacy as showing the burial pit exposed an unpleasant (although unremarkable) aspect

of his business that he was entitled to keep private.

A minority of the BSA agreed that the matter was private, but disagreed that TVNZ's intrusion could be considered offensive. The complaint was therefore upheld by a majority.

Decision ref. 2005-129

Eating Media Lunch

An episode of *Eating Media Lunch* parodied "naked news" programmes allegedly broadcast in some countries. The programme showed semi-naked news presenters seemingly engaged in sexual activity as they read the news, and included one lengthy and explicit shot of masturbation and oral sex (although the latter was pixellated).

Two complainants were concerned that the broadcast was offensive and breached standards of good taste and decency.

In its response to the complaints, TVNZ stated that *Eating Media Lunch* often delivered its satirical messages in an outrageous and flagrant manner, and pointed out that the intent of the segment complained about was to raise the question "how far down this track would the media go?"

The BSA upheld the complaint. It acknowledged that the programme was broadcast well into AO viewing time, that it came with a warning, and that the target audience was most likely used to the challenging nature of some of the series' content. Despite these contextual factors, the BSA considered that the programme had overstepped the limits and breached standards of good taste and decency. It noted, in particular, that the segment complained about was gratuitously explicit, drawn out and clearly designed to shock.

The BSA did not impose an order as it considered that the decision and its publication were sufficient notice to TVNZ to exercise more care when broadcasting sexually explicit material.

Decision ref. 2005-137

Fairness and Accuracy

In July 2005, an item on *Close Up* on TV One investigated claims that TimberSaver wood was susceptible to rot and borer, putting homeowners at risk of further leaky building problems. A report examining these concerns was followed by a studio debate between the Minister of Housing, Hon. Chris Carter, and the National party spokesman on Building and Construction, Hon. Dr Nick Smith.

Osmose New Zealand, the manufacturer of TimberSaver, complained that the item was unbalanced, inaccurate and unfair. The BSA held that it was both inaccurate and unfair to present a scientist critical of TimberSaver as an "independent expert" when in fact he was employed by Osmose's main competitor.

The BSA upheld the complaint. It considered that the expert's comments, and Dr Smith's forceful criticisms of TimberSaver, were not balanced by other material in the programme. The inclusion of a short statement from Osmose did not satisfactorily convey the alternative view that the product did not constitute a risk to safe building. Further, the BSA found that Osmose's statement could not have addressed the item's specific criticisms of TimberSaver, because it had not been informed of the item's content in advance.

The BSA accepted that there was a significant body of evidence to indicate that, when used properly, TimberSaver was a satisfactory product that performed well. In light of the "leaky homes" controversy, it found that TVNZ had a high obligation to ensure that balanced information was presented on this issue.

The BSA also found that, viewed as a whole, the item was unfair to Osmose. The BSA considered that the company was not given a reasonable opportunity to defend its product, and the item did not refute the criticisms being made.

The BSA ordered TVNZ to broadcast a summary of its decision and to pay \$5000 towards the complainant's legal costs and \$2000 costs to the Crown.

Decision ref: 2005-115

The following night, *One News* broadcast an item stating that TimberSaver, which it noted was being used in the wake of the "leaky homes" scandal, left timber vulnerable to borer or rot. The item questioned whether the product, which had been approved by the Government, was a "quick el-cheapo solution".

Osmose New Zealand complained that the item was both inaccurate and unfair. It said that TimberSaver was not vulnerable to borer or rot, and had been thoroughly and independently tested.

The BSA upheld the complaint. It found that there was no evidence that TimberSaver left timber vulnerable to borer or rot. It also considered that, in light of the sensitive nature of the "leaky homes" issue, viewers would have been unnecessarily alarmed by the item.

The BSA found that Osmose's commercial interests and reputation could have been directly affected by the inaccurate and unsupported criticism of its product. It therefore agreed that Osmose was treated unfairly in the broadcast.

The BSA ordered TVNZ to broadcast a summary of its decision and to pay \$1500 towards the complainant's legal costs and \$1000 costs to the Crown.

Decision ref. 2005-140



Full decisions can be found on the BSA's website www.bsa.govt.nz