

Election Code Review

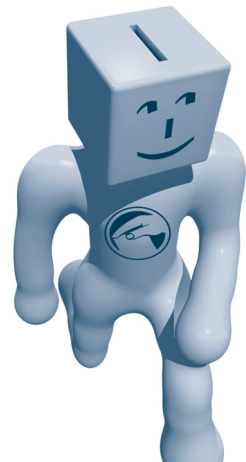
The Authority completed its review of the Election Programmes Code in early March, and the revised code was gazetted to take effect from 1 April 2005. Election programmes are mostly political advertisements. A full copy of the code which includes complaint procedures is available from the website bsa.govt.nz or by telephoning or writing to us.

Please note the following information for broadcasters from the Electoral Commission.

Election broadcasting questions hot up

The Electoral Commission says it's already fielding calls from the industry seeking advice on election broadcasting matters.

'We're really happy to point broadcasters to the right bits of the law, explain it and discuss issues so they can make appropriate



decisions,' says commission chief executive Dr Helena Catt.

'Issues so far have mainly related to candidates trying to get advertisements run ahead of the three month period before election day – which runs from 24 June unless an election date earlier than the last possible date (24 September) is announced before then,' says Dr Catt.

A couple of minor amendments to the Broadcasting Act late last year impact on broadcasters in different ways:

The commission no longer had to write to every broadcaster to ask if they were offering free or discounted time to parties to be included in the recent allocation the commission made to registered parties – meaning broadcasters no longer needed to reply.

Parties are required to forward broadcasters' invoices to the commission no later than 50 working days after the month in which the election is held and the commission is prevented from paying any received after this time.

'So, broadcasters should ensure they invoice parties promptly to avoid any difficulties,' Dr Catt says.

All other key requirements remain the same, such as: authorisation requirements for bookings and within advertisements, broadcasters needing to offer the same ratecard to all parties and to all candidates, and broadcasters needing to file returns of election programmes broadcast.

'The returns help reconcile invoices received against parties' allocations, identify non-allocation spending by parties, and any apportionment issues between party allocations and electorate candidate campaigns.'

'We really appreciate the effort that goes into preparing these, and are keen to minimise compliance costs where we can. For instance, we will accept aggregated returns from networks this election,' Dr Catt says.

The commission suggests broadcasters re-familiarise themselves with the election broadcasting requirements by reviewing its *Broadcasting guide – Election '05* on the Elections New Zealand website. The guide is in the *Voting, elections and referendums* section and replaces earlier print versions. The recent allocation decision is also on the site, recently re-launched at www.elections.org.nz.

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0800 Number

The Broadcasting Standards Authority's 0800 number is

0800 366 996

It has a recorded message which explains the complaints process.

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Please send payment along with subscription request to: Broadcasting Standards Authority, PO Box 9213, Wellington.



Quarterly

Number 26, May 2005

This edition of BSA Quarterly features topline findings of focus group research into talkback radio. We notify that the revised Election Programmes code was gazetted in March, release a discussion paper for comment by the public, and include an article for broadcasters from the Electoral Commission about election advertising rules.

BSA Research

We asked ACNielsen to conduct focus groups with members of the public to understand their attitudes and expectations of the balance and fairness standards for radio and television factual programming. Feedback from these groups will assist in the formulation of questions for a major survey of public attitudes to standards in broadcasting. More on that later in the year.

Talking about talkback

In March two focus groups discussed talkback radio. They were men and woman in their late 40s to mid 60s, mainly married with adult children, and some also had grandchildren. Most worked, but three described themselves as 'retired'.

If asked to categorise them, the researchers would say they were 'champions of democracy' meaning of 'an egalitarian and tolerant form of society'. Those who listened, as they put it, 24/7, were like *Mastermind* contestants—specialist subject: talkback radio—they were that passionate and knowledgeable about the medium.

Listeners felt that the best thing about talkback is the feeling of participation with society:

'You feel as if you're part of the on-rushing crowd when you're listening... I love to hear people's opinions and thoughts, and some are funny.'

The researchers also found that:

- Talkback listeners regard content as current affairs in as much as many of them consider almost every topic that is discussed in the medium a 'controversial issue of public importance.'
- They accept that hosts and callers have a right to express their own opinions. For them, it is an opinion based medium with some fact and education thrown in for good measure.
- They clearly understand the role of the host to occasionally provoke comment by voicing an extreme opinion. They differentiated between purely opinion pieces – 'rants' – and real talkback.
- They pointed to the difference between talk shows where hosts don't have open lines but talk to pre-selected contributors and opine greatly themselves, and real talkback where 'everyone can have their say.'
- The standard they most emphatically would

apply to talkback is fairness. They found the other standards debatable and sometimes confusing.

- They expect a high degree of fairness except for politicians... One said, 'They are big enough and liable enough to accept any criticism, good or bad.'
- The requirement for balance depended on the topic, and social responsibility was pretty much covered if the host conducted a fair show.
- Good hosts were held in enormous affection and respect. Some were good because they made you laugh from time to time, others because they were always polite and let people have their say. Some hosts did good research and others were energising because you got wound up listening to them.
- While freedom of expression may be 'up there' arching over the standards, it was tempered to a reasonable and commonly acceptable level of expression.

TV Promos and News Programmes

The Authority has been discussing with some TV broadcasters the content of programme promos which screen during the early evening news programmes. "Promos" are trailers advertising upcoming programmes. Questions have arisen about what kind of promo content is appropriate

during the news bulletins that children may watch. News programmes themselves are unclassified. A discussion paper is now on the BSA website and comments are sought from the public on its various proposals by 15 June. Contact info@bsa.govt.nz if you have any questions.

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 Authority released 49 decisions between January and March 2005

Denigration and fairness-talkback radio

The Authority upheld two complaints about a Michael Laws' talkback on Radio Pacific last July. During the broadcast the host, among other things, referred to the Exclusive Brethren as: a 'nutter sect' a 'cult' 'potty' 'dangerous little buggers' 'very bad neighbours' 'as ignorant as all get out' 'not normal people' 'strange and weird beasties' 'as mad as hatters, not very bright people as well' 'as bad as the Moonies' and 'a bunch of nutters'.

He also said: '... you just want to take them outside and de-knacker them so that they can't breed. So that you can get that sort of idiocy gene out of the human race.'

A caller into the show commented that Exclusive Brethren 'even [commit] incest', and justify it on the basis of certain passages of the Bible.

The complainants alleged breaches of principles 1, 4, 5 and 7 of the Radio Code.

The Authority considered that principles 5 (fairness) and 7 (discrimination and denigration) best encompassed the issues raised, and they subsumed principles 1 and 4.

Dealing first with denigration, the Authority has previously defined it as meaning a blackening of the reputation of a class of people (see decision 2004-129). It is also well established that a high threshold is required to find that a broadcast encouraged denigration to such an extent that it amounts to a breach of principle 7 (see decision 2004-001). On this occasion, the broadcaster argued that a broadcast must be 'hate speech' or incite people to commit violent or unlawful acts to be in breach. But the Authority said that while hate speech and incitement to

violence have been cited as examples of denigratory material, the principle is wider than that. The test is *whether* a broadcast blackens the reputation of a 'class of people' referred to, not how it might do that.

The Authority noted that the principle was not intended to prevent 'a genuine expression of serious comment, analysis or opinion'. However, on this occasion it concluded that the broadcast amounted to an unacceptable and at times vitriolic tirade against Exclusive Brethren. Little attempt had been made to comment based on facts, instead, the broadcast was based largely around unsubstantiated and denigratory allegations. In the view of the Authority this took the broadcast outside of the exceptions provided for in the Code.

Turning to fairness, the broadcaster argued that as the programme was 'talk programming' fairness was met by the fact that there were opportunities for rebuttal or response through open phone lines. However, the Authority did not accept that talkback will always be fair just because people can disagree with the host. While this may often be the case, the broadcast was a sustained denigratory attack on Exclusive Brethren and the host's words were so unfair that they could not be remedied by a mere invitation for comment. Furthermore, comment from listeners did not provide any credible rebuttal or response.

It noted that Exclusive Brethren do not generally listen to the radio and it was unlikely that open phone lines would have elicited contrary views from members of that religion.

The Authority made an award of costs to

the complainants and ordered Radio Pacific to broadcast a statement summarising the decision.

Decision ref. 2004-193

Balance, fairness, accuracy, law and order

A candidate in the 2004 Te Tai Hauauru bye-election complained about seven programmes shown on TV One in the lead up to the bye-election last July.

Balance

The candidate complained that a *One News* item was unbalanced as only the candidate from the Aotearoa Legalise Cannabis Party was interviewed, and Tariana Turia of the Māori Party was pictured.

The Authority said that while the bye-election was an issue of public importance, the item reported on an upcoming poll in a factual and neutral manner and did not present a controversial perspective requiring balancing comment.

The Authority noted that the balance requirement does not demand that every person involved with an issue be mentioned or interviewed.

Discrimination

The complainant said that the *One News* item was also discriminatory as it portrayed only Māori candidates, and that TVNZ was attempting to influence the course of the bye-election. As there was no evidence for this claim, the Authority declined to uphold the allegation.

Freedom of expression

Four programmes allegedly breached standard 2 (law and order) of the Free to Air Television Code by breaching the freedom of speech provisions in the New Zealand Bill of Rights Act. The complainant said that he was denied the right to express his political views on the programmes, which were instead focussed on the Māori party; and in relation to *Te Karere*, he was denied the right to express himself in English.

The Authority noted that while section 14 of the New Zealand Bill of Rights Act protects an individual's right, within reason, to freely express himself or herself, it does not give an individual the right to demand television air-time. The content of news and current affairs programmes is dictated by editorial considerations independent of outside pressures. Second, te reo Māori is an official language of New Zealand—no issue of broadcasting standards arises in respect of a programme just because it is broadcast in te reo Māori.

Fairness

Unfairness allegedly arose through the Māori candidates being given more 'in depth' coverage during the campaign for Te Tai Hauauru. The Authority said that the complainant had assumed that in putting himself forward as a candidate for the Te Tai Hauauru seat, he was automatically entitled to receive the same degree of media coverage as other candidates. As discussed above, that is not the case.

As no evidence was provided concerning alleged inaccuracies in the items, the Authority declined to uphold that aspect of the complaint.

Decision ref. 2004-194

Jurisdiction over TV and radio programme downloads

Jurisdiction was the issue when the Authority considered whether TVNZ was bound to consider a complaint about the content of a *Fair Go* episode available for download from TVNZ's website.

The key question was whether such a programme fell within the definition of 'broadcast' for the purposes of the Broadcasting Act 1989.

The Authority considered that accessing information by downloading it amounted to 'on demand' transmission and, as such, fell directly within the statutory exclusions contained within the definition of 'broadcasting' in the Broadcasting Act. The Authority observed that downloading programmes in this manner was analogous to renting or purchasing a video tape. Accordingly, it found that TVNZ was not bound to consider the complaint as a formal complaint under the Broadcasting Act, and that the Authority also had no jurisdiction to consider the matter.

Decision ref. 2004-207

Complaints from Government Ministers

A senior policy advisor in the office of the Deputy Prime Minister complained that an item broadcast in May 2004 on TV3's *20/20* was unbalanced, unfair and inaccurate.

The item examined the motivation of those who attended a hiko (or march) to Parliament protesting proposed foreshore and seabed legislation.

The Authority agreed that two of four statements complained of were inaccurate.

First, the item misrepresented the outcome of the Court of Appeal's decision in *Ngati Apa & Ors v Attorney General* [2003] 3 NZLR 643. Second, it stated that the Court's decision had confirmed that Māori held ownership over the foreshore and seabed. However, the effect of the Court of Appeal's decision was only to allow the question of ownership to be considered by the Māori Land Court.

CanWest argued that the statements were simply expressions of opinion as to the interpretation of the Court's decision, but the Authority disagreed. The reporter instead had made unqualified statements of fact about the nature and outcome of the court proceedings.

The Authority noted CanWest's apparent position that Government Ministers should refrain from complaining about programmes critical of government policy, and that any such invocation of the complaints process amounted to an attempt on the part of the Government to curtail the right to freedom of speech.

The Authority disagreed with this point of view. Government Ministers are as entitled as any other person to complain about broadcasts that they consider have breached standards. The Authority considers all complaints in the same manner regardless of the status of the complainant.

Decision ref. 2004-140



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