

INTRODUCTION

The Broadcasting Act 1989 (the Act) creates a system of broadcasting standards. There are eleven areas specified in the Act from which standards have been developed.

They are:

- Good taste and decency s4(1)(a)
- Programme information s21(1)(e)(vi)
- Children’s interests s21(1)(e)(i)
- Violence s21(1)(e)(ii)
- Law and order s4(1)(b)
- Discrimination and denigration s21(1)(e)(iv)
- Alcohol s21(1)(e)(v)
- Balance s4(1)(d)
- Accuracy s21(1)(e)(iii)
- Privacy s4(1)(c) and s21(1)(e)(vii)
- Fairness s21(1)(e)(iii)

The Act also establishes a system allowing people to complain to a broadcaster if they think these standards have been breached. People who are dissatisfied with the broadcaster’s response to their complaints can refer them to the Broadcasting Standards Authority for independent determination. This Codebook contains the three main Codes of Broadcasting Practice and is designed to provide guidance to broadcasters and their audiences on the standards. There is a separate code for election programmes.

New Zealand is a liberal democracy where we value broadcasters’ programming, both as an exercise of broadcasters’ right to freedom of expression and for the vibrant exchange of information and ideas that is generated. Broadcasters can hold the powerful to account. They can express our identity. They can reflect and stimulate culture. They can teach us about our lives and our world. They can entertain us. Their role is vital, and the law and common sense require us to be cautious before restricting their endeavours.

On the other hand, broadcasters also have potential to do harm. Broadcasting standards recognise these harms and seek to guard against them. It can often be difficult to strike a balance. It is the responsibility of this Authority to hold the balance in the public interest.

THE BROADCASTING STANDARDS AUTHORITY

The Broadcasting Standards Authority (BSA) is a Crown entity. It is funded partly by government and partly by contributions from broadcasters. Our board comprises four members, one of whom is the nominated Chair. We have a small staff in our office in Wellington.

One of our main functions is to determine complaints which complainants may consider have not been properly dealt with by the broadcaster.

We deal with complaints without undue formality. We consider these complaints on the written material supplied. Sometimes we ask for more information and we can, if necessary, convene a hearing. We try to conduct our business efficiently but informally and without causing unnecessary cost for complainants, broadcasters and also within our own organisation. Our decisions are required to be made public.

We are required to deal with complaints fairly and to observe the rules of natural justice.

We also acknowledge the principles of partnership, protection and participation inherent in Te Tiriti o Waitangi and consider the needs, aspirations and cultural values of tangata whenua.

Our jurisdiction under the Act covers television and radio broadcasting. It also extends to complaints about programmes that are viewed/listened to online, so long as the programmes were originally broadcast on television or radio; the complainant can provide us with the details of the original broadcast; and the complaint is made within the statutory timeframe. We are not able to consider any online material which has not also been broadcast. Further information on the complaints process, including where you can go if your complaint concerns something that is not covered by the BSA, can be found in the Guide to the BSA Complaints Process for Television and Radio Programmes at the back of this Codebook.

We have two other functions. We have a role in overseeing and developing the broadcasting standards system, which includes working with broadcasters and others to provide clear guidance on the system, to review codes, and undertake appropriate research. We are also required to provide information about the work we do and the broadcasting standards system generally.

We are accountable to the Minister of Broadcasting for the fulfilment of our obligations and for our expenditure. We are nevertheless an independent body and we are not subject to any political or other influences in our decision making.

BROADCASTERS

New Zealand broadcasters range from very large commercial organisations through to very small community-based operations. Only television and radio broadcasters are subject to the Broadcasting Act. The Act and the standards which arise under the Act apply to all television and radio broadcasters regardless of the size of their operation.

In order to meet the diverse needs and expectations of viewers and listeners, material broadcast on different platforms and by different broadcasters may vary widely. We have moved from a time when messages were always conveyed in English to the present time where English is one of the many languages used by broadcasters.

Te Reo and Māori culture have a special significance in New Zealand's multicultural society and this is reflected in our broadcasting environment.

Each broadcasting platform contains a variety of programming to cater for the diversity of language, genres and expectations of its audience and this is reflected in the corresponding code. The diversity of platforms has resulted in the development of three different codes for different methods of delivering broadcasts – one each for radio, free-to-air television and pay television. Together with the election programmes code, these codes cover all broadcast material that falls within our jurisdiction.

All broadcasters are expected to retain recordings of all broadcasts for 35 days. In the event of a complaint, this assists the broadcaster to argue their point of view and ensures the BSA gains a correct understanding of the content, context and tone of the broadcast.

FREEDOM OF EXPRESSION

In New Zealand and throughout most liberal democracies, principles of freedom of expression are enshrined in our constitutional law by the Bill of Rights Act 1990 and are required to be given the respect they deserve. The right we have to express ourselves in the way we choose, and to receive information, is a fundamental freedom but it is not an absolute freedom. It is nevertheless to be given a very high value and doing so will mean that in some cases the cost of our having this freedom will be a cost to be carried by our society.

The importance of freedom of expression is such that, at some times, the exercise of it will cause offence to be taken by some or will result in harm being felt by some. Ultimately, there is a sensible balance to be struck.

The broadcasting complaints system places restrictions on the right to freedom of expression. Freedom of expression, including the broadcaster's right to impart ideas and information and the public's right to receive that information, is the starting point in our consideration of complaints. We may only uphold complaints where the limitation on the right is reasonable, prescribed by law and demonstrably justified in a free and democratic society.

This is often described as 'proportionality'. Proportionality can be used as a check to ensure that the social benefit of the decision to uphold a complaint exceeds the social

loss caused by the encroachment on the right to freedom of expression. The more severe the restriction on the right to freedom of expression, the more powerful must be the justification for the restriction.

For us, this is about assessing in each case, how important the right to freedom of expression is on the one hand and on the other, how much harm the broadcast has done to people in society by potentially breaching broadcasting standards.

The level of public interest in a broadcast is particularly important (see the definition of 'public interest' on page 9, and further elaboration of 'legitimate public interest' within Guidance: Privacy at page 61). If it deals seriously with political issues or other topics that help us govern ourselves and hold our leaders accountable it will carry a high level of public interest. If it contributes to our search for truth and knowledge or nurtures our social, cultural and intellectual growth it will also carry a high level of public interest. In New Zealand we must be particularly hesitant before imposing limitations on material in which there is high public interest.

Conversely, broadcasting standards exist to ensure that broadcasters do not (for example) misinform us about important things, or unfairly harm the dignity or reputation of the people they feature, or leave out significant viewpoints when telling us about issues that matter to us. The more a broadcaster threatens these vital interests, the more readily we will be required to conclude that it is appropriate to uphold a complaint, notwithstanding principles of freedom of expression.

Ultimately, this is a balancing process. In this publication we set out the standards which Parliament has said are required to be established and maintained. In appropriate cases, the upholding of these standards will mean that the right of freedom of expression has to be limited.

CHOICE AND CONTROL

The level of choice and control that viewers and listeners have over the content they expose themselves to impacts on the application of the standards. The freedom and capacity of an audience to make viewing and listening choices and to be able to prevent children and young people from viewing or listening to inappropriate material are significant factors in determining what is, and what is not, acceptable. Broadcasters are more likely to have fulfilled their responsibilities when they enable customers to regulate their own media listening and viewing behaviour.

Broadcasters do this in a number of ways. Classifications enable viewers to exercise choice as to what to watch on television (both free-to-air and pay television). Scheduling and time of broadcast (on free-to-air television and radio) also inform this choice. Audience advisories (including warnings) enable choice about what viewers and listeners want to be exposed

to on all platforms. The established brand identity of a particular programme, channel or station also helps to inform the viewer or listener about what content to expect. Some broadcasts will be designed to cater for particular interest groups and these broadcasts may be able to contain material which will not be suitable for general delivery in mainstream consumption time, on free-to-air television and radio.

Pay television overall enjoys a less restrictive environment than free-to-air television. This is because of the choice customers make in paying to receive broadcasts and the protections they can provide to prevent inappropriate content being viewed by children and young people, including filtering technology and PIN codes.

Since the switch from analogue to digital television, viewers of free-to-air television are also now able to block content by using filtering technology and PIN codes. Although this technology is already widely available, at the time of publishing this Codebook, public awareness of its availability is not yet widespread. Once it can be demonstrated that the availability of protections is well-known, it is expected that the Free-to-Air Television Code will require further review and modification. Our industry is rapidly changing and in this context, the Codebook must evolve as necessary to remain relevant and fit for purpose. It is expected that reviews of the codes will take place with more frequency than in the past to accommodate this.

STANDARDS, GUIDELINES AND COMMENTARY

In this section we set out the broadcasting standards. All eleven standards apply to all television and radio broadcasts. These standards have their origins in the Act, which became law in 1989. In 1989 broadcasting was very different, with limited platforms and clear demarcations between broadcasting formats. However, we are required to apply the Act as it stands and deal with the standards as they were shaped in 1989. This does not mean that broadcasting standards have been frozen in the past.

We apply the standards according to contemporary social requirements and conditions. We are now in a very different world and our application of the standards reflects our present broadcasting environment. In addition, in the application of standards we must continue to adjust to societal and technological change.

The codes for each broadcasting platform – radio, free-to-air television and pay television – are set out separately. The standards are the basic rules which apply according to the different platforms of broadcasting. How those rules are applied will vary according to the particular circumstances. While the standards are similar – the statute does not limit the application of some standards to some platforms – they will be applied differently in relation to pay television than they will be in relation to free-to-air television or radio. This recognises the special circumstances of pay television, including that viewers choose to pay to subscribe to particular programmes and channels, and the availability of

filtering technology which allows viewers to block certain content. It is noted, however, that free-to-air viewers are now able to access filtering technology and use PIN codes, and it is expected this availability may soon become widely known by audiences. This shift will be relevant context for the Authority in assessing whether standards have been breached.

Additionally, pay television broadcasters may offer channels over which they have no (or little) editorial control (for example, foreign pass-through channels). This limited control of the broadcaster will be an important consideration when assessing whether a programme has breached standards. However, it is expected that generally a pay television broadcaster will be mindful of the standards and exercise appropriate discretion and judgement when determining which channels should be allowed to pass through its platform.

In relation to each code, this Codebook sets out the standards and guidelines, and elaborates on these in the commentary. It is the wording of the standard and its objectives which are paramount when determining whether the standard has been breached. Guidelines and commentary inform the interpretation of the standard. They will allow flexibility in application and interpretation if circumstances or context require.

The Codebook will only be amended after consultation with broadcasters and other interested parties in accordance with the Act. Our industry is rapidly changing and in this context, the Codebook must evolve as required. It is expected that reviews of the codes will take place with more frequency than in the past. As noted above, the BSA is already aware of one imminent development which we expect will trigger a review – one which relates to the availability of protections on free-to-air television which are similar to those which had historically only been available on pay television (see Choice and Control on the previous page).

DEFINITIONS

In this Codebook, unless otherwise indicated, a word or expression assigned a meaning in the Act has the meaning given there. In respect of other words or expressions, the following meanings shall apply unless otherwise indicated.

Act means the Broadcasting Act 1989.

Advisory Opinion means an opinion issued pursuant to s21(1)(d) of the Act.

Alcohol promotion may be in the form of one or more of the following:

- promotion of an alcohol product, brand or outlet ('promotion')
- alcohol sponsorship of a programme ('sponsorship')
- advocacy of alcohol consumption ('advocacy').

Audience means the viewers and listeners of both television and radio.

Audience advisory means a message or warning broadcast prior to a programme or particular content. It may be verbal, visual or both. It should be broadcast immediately prior to content which is likely to disturb, distress or offend a significant number of viewers. On pay television, audience advisories include:

- C** – content may offend
- L** – language may offend
- V** – contains violence
- S** – sexual content may offend

Authority means the Broadcasting Standards Authority.

Child, where referring to an audience member, means a person under the age of 14. In privacy cases, a parent, guardian or person over the age of 18 acting in loco parentis (standing in the shoes of the parent or guardian) may consent on behalf of a child under the age of 16.

Children's normally accepted listening times are usually up until 8.30pm and especially before school and after school.

Children's normally accepted viewing times for free-to-air television are usually up until 8.30pm and/or during G or PGR programming (see below).

Classifications (free-to-air television) means the classifications that should be broadcast on all free-to-air television programmes except news, current affairs, sports and live content. The classifications are:

G – General: Programmes which exclude material likely to be unsuitable for children. Programmes may not necessarily be designed for child viewers but should not contain material likely to alarm or distress them.

G programmes may be screened at any time.

PGR – Parental Guidance Recommended:

Programmes containing material more suited for mature audiences but not necessarily unsuitable for child viewers when subject to the guidance of a parent or an adult.

PGR programmes may be screened between 9am and 4pm, and after 7pm until 6am.

AO – Adults Only: Programmes containing adult themes and directed primarily at mature audiences.

AO programmes may be screened between midday and 3pm on weekdays (except during school and public holidays, as designated by the Ministry of Education) and after 8.30pm until 5am.

Classifications (pay television) means the classifications that should be broadcast on all pay television programmes except news, current affairs, sports and live content. The classifications are:

- G** – approved for general viewing
- PG** – parental guidance recommended for younger viewers
- M** – suitable for mature audiences 16 years and over
- 16** – people under 16 years should not view
- 18** – people under 18 years should not view

Doorstepping refers to the filming or recording of an interview or attempted interview with someone, without any prior warning.

Factual programmes/Factual programming means non-fiction programmes which contain information that audiences might reasonably expect to be authoritative or truthful.

Premium channel means a pay television channel that subscribers choose to subscribe to and pay a subscription fee for, in addition to the entry level fee already paid for the basic provision of the pay television service.

Public interest refers to a matter of concern to, or having the potential to affect, a significant section of the New Zealand population. It is more than something that merely interests the public.

Strong adult content means a greater degree of sexual activity, potentially offensive language, realistic violence, sexual violence or horrific encounters, which go beyond audience expectations of usual Adults Only content.