

# BROADCASTING STANDARDS IN NEW ZEALAND

## CODEBOOK

FOR RADIO, FREE-TO-AIR-TELEVISION & PAY TELEVISION



DEVELOPED BY BROADCASTERS AND THE BSA AND ISSUED TO TAKE EFFECT FROM 1 APRIL 2016

In the case of any inconsistency between this Codebook and any predating BSA material such as codes, practice notes and advisory opinions, this Codebook will prevail.



# BROADCASTING STANDARDS IN NEW ZEALAND CODEBOOK

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# 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.

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# COMMENTARY ON THE STANDARDS

# PART 1

STANDARDS WHICH  
RELATE TO SOCIAL  
RESPONSIBILITIES

## STANDARD 1 – GOOD TASTE AND DECENCY

The purpose of this standard is to protect audience members from viewing or listening to broadcasts that are likely to cause widespread undue offence or distress or undermine widely shared community standards.

Attitudes towards taste and decency differ widely and continue to evolve in a diverse society such as ours. Caution must therefore be exercised when considering matters of taste. The feelings of the particularly sensitive cannot be allowed to dictate what can be broadcast. However, there are limits, and the broad limit is that a broadcast must not seriously violate community norms of taste and decency.

Context is crucial, and the different codes reflect this. A broadcast's context may justify the inclusion of distasteful material or minimise its harmfulness. The timing of a broadcast is relevant (except for pay television when filtering technology is available). For example, challenging material broadcast late at night, on a news programme or as a central part of a dramatic narrative, is more likely to be acceptable. Similarly, offensive material that is integral to a programme of political, cultural, scientific or social significance or that otherwise advances our understanding of important issues is unlikely to contravene this standard. Each case will depend on its particular facts and relevant contextual factors. Some extreme material, regardless of the context in which it is offered, may go too far.

In television this standard is usually considered in relation to offensive language, sexual material, nudity and violence, but may also apply to other material presented in a way that is likely to cause offence or distress.

In a radio context this is usually in relation to offensive language, sexual material or, sometimes, violence.

Pay television operates in a less restrictive environment than free-to-air television because of the choice customers make in paying to receive broadcasts. The freedom and capacity of an audience to choose

what it views and to be able to prevent children and young people from viewing inappropriate material are significant factors in determining what is, and what is not, acceptable. Violent and other potentially offensive material is readily accessible in our society and it follows that some material of this kind will be able to be accessed on television. However, there must be strong protections in place to prevent this material being viewed by children and young people, and strong protections to ensure that it is not inadvertently viewed by those who do not wish to do so. Pay television broadcasters provide these protections through appropriate classifications and advisories (including warnings), filtering technology, PIN codes and an electronic programme guide.

In all broadcasting, audience expectations are crucial. Audiences who know what they are getting can usually avoid this material or supervise their children's exposure to it. If broadcasters successfully manage their audiences' expectations by providing information sufficient for them to make informed choices about content, breaches are less likely. That may include informative audience advisories before or during a programme. It may also include disseminating information (for example, through programme guides) about the content of particular TV programmes or channels. Radio stations usually have established target audiences and these allow stations to legitimately select and schedule content. Talkback radio has become a separate category of broadcasting due to its robust and sometimes challenging nature, and different standards often apply to programmes of this kind.

## STANDARD 2 – PROGRAMME INFORMATION

The purpose of this standard is to ensure that audiences are properly informed about the content of the programmes on offer. The audience should be able to rely on programme classifications, advisories and other information to give them an indication of a programme's likely content, which in turn allows them to regulate their own, and their children's, viewing or listening behaviour.

The application of this standard differs markedly across the codes, reflecting the different platforms from which content is delivered. Primarily, the difference is in the application, or not, of classifications and timebands to programme content. In general, all broadcasters should provide audience advisories where broadcasts contain violence, sexual material, offensive language or other content likely to disturb or offend a significant number of viewers, to assist the audience in choosing programmes.

In the free-to-air television context, there are clearly defined classifications and corresponding timebands (G, PGR and AO). There are no such timebands on radio, though it is recognised that children are more likely to be listening at certain times of the day, which are broadly consistent with children's viewing times on free-to-air television (for example, before and after school, up until 8.30pm on weekdays, and on weekends).

Pay television uses a different system of classifications and audience advisories. Broadcasters fulfil their obligations by providing regular and consistent advice about programmes, including classifications and advisories (such as warnings), to enable their customers to make informed viewing decisions. They also promote the availability of filtering technology allowing parents and guardians to control their children's viewing. It is only where this filtering technology is not available that broadcasters must also ensure programmes are appropriately scheduled.

## STANDARD 3 – CHILDREN'S INTERESTS

The purpose of this standard is to enable audiences to protect children from material that unduly disturbs them, is harmful, or is likely to impair their physical, mental or social development.

The standard is designed to protect children when viewing and listening to broadcasts. If a complaint relates to a child having been featured or referred to in a programme, this may raise matters of fairness or privacy and should be dealt with under those standards.

Context is important in a consideration of this standard, including:

- the programme classification
- the time of broadcast (on free-to-air television and on radio)
- any pre-broadcast advisories (including warnings)
- the nature of the programme
- the availability of filtering technology
- the target audience of the channel/station and of the particular programme or segment
- audience expectations of the channel/station, of the programme or of a particular host or presenter
- other information available to the audience about the programme, including publicity and promos.

In general, for free-to-air television, the standard will only apply during times that children are likely to be watching television. Usually, this will be up until 8.30pm, or during G and PGR time. Broadcasters should also carefully consider children's interests when determining the level of AO content to be screened during the transition from G or PGR programming to AO time.

There are no prescribed timebands on radio or on pay television as there are on free-to-air television. On radio, the standard will generally only apply during times that children are likely to be listening to the radio (for example, before and after school, and usually up until 8.30pm on weekdays, and on weekends).

On pay television, children's interests are served through channels specifically targeted at niche audiences, and the availability of filtering technology which allows parents and caregivers to block certain content, which then requires a PIN number to be entered in order to unblock that content.

We recognise that it is not possible or practicable for broadcasters to shield children from all potentially unsuitable content. The objective is to allow broadcasters to broadcast to a wide audience – or in the context of

pay television, to offer a wide range of content to niche audiences who choose to subscribe to special channels – while taking reasonable steps to protect children through adequate information for viewers and listeners, and, on pay television, also through the availability of filtering technology. We expect all broadcasters who utilise filtering technology, or other means of controlling access to broadcast content, to provide information to viewers about the availability of this technology.

The children’s interests standard is related to the good taste and decency standard and the programme information standard, which take into account the same contextual factors. However, there are differences in focus. The focus of this standard is on harm that may be unique to children; content that could be considered harmful to children may not be harmful or unexpected when considering the audience in general. Thus, the children’s interests standard may be more rigorous than the general good taste and decency standard.

## STANDARD 4 – VIOLENCE

The purpose of this standard is to protect audiences from unduly disturbing violent content.

Context is crucial, and the different codes reflect this. A broadcast’s context may justify the inclusion of violent material or minimise its harmfulness. Broadcasters should protect audiences by ensuring violent content is justified by context, and by ensuring viewers are adequately informed of likely content and warned if content is likely to disturb a significant number of viewers.

Relevant contextual factors that will be considered may include:

- the programme classification
- the time of broadcast (on free-to-air television and radio)
- any pre-broadcast advisories (including warnings)
- the nature of the programme
- the availability of filtering technology
- whether the viewer has paid to watch the broadcast
- the target audience of the channel/station and of the particular programme or segment
- audience expectations – for example, violent material broadcast late at night, on a news programme or as a central part of a dramatic narrative, is more likely to be acceptable
- other information available to the audience about the programme, including publicity and promos.

In the context of pay television, the freedom and capacity of an audience to choose what it views and to prevent children and young people from viewing inappropriate material are significant in determining what is, and what is not, acceptable. In most cases, a pay television depiction of violence will be justified by context, provided it is appropriately classified and an audience advisory is broadcast. Even with appropriate classifications, warnings and the availability of filtering technology, some material may nevertheless be socially unacceptable in any context, for example, graphic depictions of actual murders or rapes.

Violent material is readily accessible in our society and it follows that some material of this kind will be able to be accessed on television. However, there must be strong protections in place to prevent this material being viewed by children and young people, and strong protections to ensure that it is not inadvertently viewed by those who do not wish to do so. Most pay television providers make available filtering technology which allows viewers to block certain content, which then requires a PIN number to be entered in order to unblock it for viewing. Free-to-air television broadcasters should ensure that strong adult content screens after 9.30pm and that appropriate advisories are given.

We recognise that violent material has more impact on television, where it is depicted visually as well as aurally. Nevertheless, radio broadcasts may also describe or discuss violence, for example, in news and current affairs, sports events, talkback or fictional programmes, which is why the standard is included in that code.

## STANDARD 5 – LAW AND ORDER

The purpose of this standard is to prevent broadcasts that encourage audiences to break the law, or otherwise promote criminal or serious antisocial activity.

Context is crucial in assessing the programme's likely practical effect. A distinction will usually be drawn between factual, and fictional or dramatic depictions, and the level of public interest in a programme will be a significant factor for consideration.

Other important factors include:

- the programme classification
- the time of broadcast (on free-to-air television and radio)
- any pre-broadcast advisories (including warnings)
- the nature of the programme
- the availability of filtering technology
- whether the viewer has paid to watch the broadcast
- the target audience of the channel/station and of the particular programme or segment
- audience expectations – for example, material broadcast late at night, on a news programme or as a central part of a dramatic narrative, is more likely to be acceptable
- other information available to the audience about the programme, including publicity and promos.

This standard does not stop broadcasters from discussing or depicting criminal behaviour or other law-breaking, even if they do not explicitly condemn that behaviour. It does not require broadcasters to promote law and order. It does not prevent genuine criticism – even provocative criticism – of laws or their enforcement by the courts and police.

The standard is concerned with broadcasts that actively undermine, or promote disrespect for, the law or legal processes. Direct incitement to break the law is likely to breach this standard, if there is a real likelihood that the audience will act on it. Broadcasts which condone criminal activity or present it as positive or humorous may have this effect. Explicit instructions on how to perform a criminal technique may also undermine law and order.

Serious antisocial activity is activity that is contrary to the laws and customs of society to such a degree that a significant number of people would find it unacceptable. It is broader than illegal activity and can include behaviour that is not necessarily illegal but may nonetheless be antisocial, for example, bullying.

In most cases, context will permit a pay television depiction of illegal activity, provided it is appropriately classified and an audience advisory is broadcast, because of the choice made by, and the range of material available to, subscribers, and the availability of filtering technology.

## STANDARD 6 – DISCRIMINATION AND DENIGRATION

The purpose of this standard is to protect sections of the community from verbal and other attacks, and to foster a community commitment to equality. The standard does not apply to individuals or organisations, which are dealt with under the fairness standard.

The standard applies only to recognised 'sections of the community', which are consistent with the grounds for discrimination listed in the Human Rights Act 1993.

'Discrimination' has consistently been defined as encouraging the different treatment of the members of a particular section of the community, to their detriment (for example, see BSA decision *Teoh and Television New Zealand Ltd*, 2008-091). 'Denigration' is defined as

devaluing the reputation of a class of people (for example, see BSA decision *Mental Health Commission and CanWest RadioWorks Ltd*, 2006-030).

The importance of freedom of expression means that a high level of condemnation, often with an element of malice or nastiness, will be necessary to conclude that a broadcast encouraged discrimination or denigration in breach of the standard. Comments will not breach the standard simply because they are critical of a particular group, because they offend people, or because they are rude; the Codebook recognises that allowing the free and frank expression of a wide range of views is a necessary part of living in a democracy. Serious commentary, factual programmes, legitimate drama, humour and satire, are valuable forms of speech, and are unlikely to breach the standard unless the content of the broadcast amounts to hate speech or a sustained attack on a particular group.

In assessing whether a broadcast has gone too far, the following factors will be considered:

- the language used
- the tone of the person making the comments
- the forum in which the comments were made, for example, a serious political discussion, or a satirical piece
- whether the comments appeared intended to be taken seriously, or whether they were clearly exaggerated
- whether the comments were repeated or sustained
- whether the comments made a legitimate contribution to a wider debate, or were gratuitous and calculated to hurt or offend.

## STANDARD 7 – ALCOHOL

The purpose of this standard is to prevent broadcasts which promote alcohol in a socially irresponsible way in the context of their genre. We apply a two-stage test when assessing whether the standard has been breached:

1. Did the broadcast amount to alcohol promotion, in the form of ‘promotion’, ‘sponsorship’ or ‘advocacy’? (see Definitions, page 9)
2. If the broadcast did amount to alcohol promotion, was that alcohol promotion socially responsible?

Broadcasts which contain ‘promotion’ or ‘sponsorship’ are usually readily identified by references to alcohol brands or products. A broadcast will amount to ‘advocacy’ if it presents alcohol consumption in a positive light – particularly, excessive alcohol consumption – or if it portrays alcohol consumption as a necessary part of an event or activity.

Alcohol promotion in a broadcast will usually be found to be ‘socially irresponsible’ if:

- it portrays excessive alcohol consumption as positive and desirable
- it is dominated by alcohol promotion
- it fails to acknowledge the negative effects of alcohol consumption
- it involves excessive alcohol consumption by young people
- it combines alcohol and another activity in a way that endangers health and safety.

The application of the standard will also be qualified by any law or regulation relating to the promotion of alcohol.

# PART 2

STANDARDS  
WHICH RELATE  
TO INFORMATION  
BROADCAST

## STANDARD 8 – BALANCE

The purpose of this standard is to ensure that competing viewpoints about significant issues are presented to enable the audience to arrive at an informed and reasoned opinion. The objective of this standard – a well-informed public – is important to the operation of an open and democratic society and is consistent with the principles of freedom of expression.

A common sense approach should be taken in applying the standard. We acknowledge the practical reality that programmes cannot be perfectly balanced and this is not required. Consideration of this standard will reflect the present broadcasting environment in New Zealand and the increased flows of information which now pass over us on topics of all kinds, the proliferation of broadcast media, media which is consciously delivered from a political perspective, and a more discriminating viewing public. Decisions made under the balance standard will always be fact- and context-dependent to reflect this modern and diverse broadcasting world.

The standard also allows for balance to be achieved over time, 'within the period of current interest' in relation to a particular issue.

A number of criteria must be satisfied before the requirement to present significant alternative viewpoints is triggered. The standard applies only to news, current affairs and factual programmes (see the definition under Standard 9 – Accuracy below), which discuss a controversial issue of public importance. The subject matter must be an issue 'of public importance', it must be 'controversial' and it must be 'discussed'.

An issue of public importance is something that would have a significant potential impact on, or be of concern to, members of the New Zealand public. A controversial issue will be one which has topical currency and excites conflicting opinion or about which there has been ongoing public debate. In most cases, human interest or personal stories will not be considered controversial issues of public importance.

In determining whether programmes breach this standard, the following factors will be considered:

- the programme's introduction and the way in which the programme is presented
- the type of programme
- the nature of the issue and of the discussion
- whether the programme approaches a topic from a particular perspective
- whether the programme acknowledges the existence of other views
- whether the audience could reasonably be expected to be aware of other views, including in other media sources
- the platform on which the programme is broadcast.

A key consideration is what an audience expects from a programme, and whether they were likely to have been misinformed by the omission or treatment of a significant perspective (for example, where a significant perspective is presented with limited coverage or in a manner which undermines its validity).

## STANDARD 9 – ACCURACY

The purpose of this standard is to protect the public from being significantly misinformed.

The standard applies only to news, current affairs and factual programming. News and current affairs programmes or items will usually be readily identified, taking into account what audiences would reasonably expect to be news and current affairs.

Factual programmes are non-fiction programmes which contain information that audiences might reasonably expect to be authoritative or truthful, such as documentaries (see, for example, BSA decision *Accident Compensation Corporation and Television New Zealand Ltd*, 2006-126). These can be distinguished from programmes which are wholly based on opinions or ideas (see, for example, BSA decision *Smith and Television New Zealand Ltd*, 2012-130).

The audience may be misinformed in two ways: by incorrect statements of fact within the programme; and/or by being misled by the programme.

Where statements of fact are at issue, the standard is concerned only with material inaccuracy. Technical or unimportant points unlikely to significantly affect the audience's understanding of the programme as a whole are not material.

Being 'misled' is defined as being given 'a wrong idea or impression of the facts' (see High Court judgment *Attorney General of Samoa v TVWorks Ltd*, CIV-2011-485-1110). Programmes may be misleading by omission, or as a result of the way dialogue and images have been edited together.

Expressions of comment, analysis or opinion are exempt from the requirement to be accurate. To read more about this, see the guidance section on accuracy at the back of this Codebook.

Determination of a complaint under the accuracy standard occurs in two stages. The first step is to consider whether the programme was inaccurate or misleading. The second step is to consider whether reasonable efforts were made by the broadcaster to ensure that the programme was accurate and did not mislead. This means that a programme may be inaccurate or misleading, but nevertheless may not breach the standard, if the broadcaster took reasonable steps, for example, by relying on a reputable source (see guideline 9e).

# PART 3

STANDARDS WHICH  
RELATE TO PEOPLE  
OR ORGANISATIONS  
TAKING PART OR  
REFERRED TO IN  
BROADCASTS

## STANDARD 10 – PRIVACY

In our society we value and respect the privacy of the individual. Parliament has identified privacy as particularly important: it is the only broadcasting standard for which compensation may be awarded, and the only one where complaints can be sent directly to the Authority. The standard is concerned with identifiable individuals who feature in programmes or are directly affected by programmes – not with the general audience.

As a society, we recognise that certain information about us is so sensitive that we can reasonably expect to be able to decide who we share it with. We also recognise that there are times and places where we as individuals are entitled to be left alone, or are entitled to be able to choose those who are with us or who observe us. These are concepts of *solitude* and *seclusion*.

On the other hand, there are other times and places where we have to expect that what we are doing may be seen, heard or recorded by others. We have, for example, a right to expect privacy in our bedrooms but very limited rights to expect privacy on a public street. Likewise, some information about us is simply not private, or we may voluntarily surrender some privacy. Sometimes, privacy can be used to shield wrongdoing and wider exposure is in the public interest. Public interest is defined as being more than something that merely interests the public. It is a matter of concern to, or having the potential to affect, a significant section of the New Zealand population.

The privacy standard aims to respect, where reasonable, people's wishes not to have themselves or their affairs broadcast to the public. It seeks to protect their dignity, autonomy, mental wellbeing and reputation, and their ability to develop relationships, opinions and creativity away from the glare of publicity. But it also allows broadcasters to gather, record and broadcast material where this is in the public interest.

Our expectations of privacy vary with time, culture and technology, which creates some difficult boundaries. The guidelines given under Standard 10 – Privacy are designed to assist broadcasters to strike the balance.

More guidance is given at the back of this Codebook, entitled *Guidance: Privacy*.

## STANDARD 11 – FAIRNESS

The purpose of this standard is to protect the dignity and reputation of those featured in programmes.

The objective in assessing fairness is to weigh broadcasters' right to freedom of expression against the right of individuals and organisations to be treated fairly. It is challenging for broadcasters to navigate the line between disseminating information to their audiences which is in the public interest, and the risk of overstepping and causing 'unfair' harm to individuals and organisations. Individuals and organisations have the right to expect they will be dealt with justly and fairly and protected from unwarranted damage.

Generally, a consideration of what is fair will take into account the following:

- whether the audience would have been left with an unduly negative impression of an individual or organisation
- whether an individual or organisation taking part or referred to in a programme was adequately informed of the nature of their participation
- whether informed consent was required and/or obtained (guidance on what constitutes 'informed consent' is found in *Guidance: Privacy* at the back of this Codebook)
- whether the individual or organisation was given a reasonable opportunity to comment, and whether their comments were adequately presented in the programme
- the nature of the individual, for example, a public figure or organisation familiar with dealing with the media, as opposed to an ordinary person with little or no media experience
- whether any critical comments were aimed at the participant in their business or professional life, or their personal life
- the public significance of the broadcast and its value in terms of free speech.

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# THE RADIO CODE

The following standards apply to all radio programmes broadcast in New Zealand. Freedom of expression is the starting point in a consideration of complaints. Complaints can only be upheld where the limitation on the right to freedom of expression is reasonable, prescribed by law and demonstrably justified in a free and democratic society.

The standards in this code should be read and interpreted alongside the commentary at the front of the Codebook.

#### **PART 1** Standards which relate to social responsibilities

- Standard 1** Good Taste and Decency
- Standard 2** Programme Information
- Standard 3** Children's Interests
- Standard 4** Violence
- Standard 5** Law and Order
- Standard 6** Discrimination and Denigration
- Standard 7** Alcohol

#### **PART 2** Standards which relate to information broadcast

- Standard 8** Balance
- Standard 9** Accuracy

#### **PART 3** Standards which relate to people or organisations taking part or referred to in broadcasts

- Standard 10** Privacy
- Standard 11** Fairness

# PART 1

## STANDARDS WHICH RELATE TO SOCIAL RESPONSIBILITIES

## STANDARD 1 – GOOD TASTE AND DECENCY

Current norms of good taste and decency should be maintained, consistent with the context of the programme and the wider context of the broadcast.

### Guidelines

- 1a The context in which content occurs and the wider context of the broadcast are relevant to assessing whether a broadcast has breached this standard, including:
  - the nature of the programme and the station
  - the time of broadcast
  - whether the broadcast was live or pre-recorded
  - the use of audience advisories, if any
  - the target and likely audience
  - audience expectations of the station and the programme
  - the public interest in the broadcast.
- 1b Where broadcasters take effective steps to inform their audiences of the nature of their programmes, and enable listeners to regulate their own and their children's listening behaviour, they are less likely to breach this standard.
- 1c Talkback is an opinionated environment and is granted some latitude to be provocative and edgy in the interests of robust debate.
- 1d If seriously offensive material from a third party is inadvertently broadcast, it is less likely to breach the standard if the host immediately redresses the issue.

## STANDARD 2 – PROGRAMME INFORMATION

Broadcasters should, where reasonably possible, issue an audience advisory where the content of a broadcast is outside audience expectations.

### Guideline

- 2a While this standard will rarely apply to radio, an appropriate audience advisory should be broadcast if programme content is likely to be outside audience expectations of the radio station or of the particular programme.

## STANDARD 3 – CHILDREN'S INTERESTS

Broadcasters should ensure children can be protected from broadcasts which might adversely affect them.

### Guidelines

- 3a This standard will only apply during times when children are likely to be listening (usually up until 8.30pm and especially before school and after school – see *Children's normally accepted listening times* under Definitions, page 9).
- 3b Material likely to be considered under this standard includes:
  - sexual material or themes
  - violent content or themes
  - offensive language
  - social or domestic friction
  - dangerous, antisocial or illegal behaviour
  - material in which children or animals are humiliated or badly treated
  - graphic descriptions of people in extreme pain or distress

which are outside audience expectations of the station or programme.

- 3c Context is an important consideration when assessing complaints under this standard, including the public interest in the broadcast, the target and likely audience, audience expectations and any factors that mitigate the likely harm to children, such as humour or educational benefit.

## STANDARD 4 – VIOLENCE

**Broadcasters should exercise care and discretion when referencing violence.**

### Guidelines

- 4a This standard will rarely apply to radio (as violent material has more impact visually).
- 4b Any description of, or reference to, violence should be justified by context.
- 4c Broadcasters should exercise caution with content likely to incite or encourage violence or brutality.
- 4d In news, current affairs and factual programmes, where disturbing or alarming material is often reported to reflect a world in which violence occurs, the material should be justified in the public interest.
- Judgement and discretion must be used in deciding the degree of graphic detail to be included in news programmes, particularly when children are likely to be listening.
  - An audience advisory should be used when appropriate.

## STANDARD 5 – LAW AND ORDER

**Broadcasters should observe standards consistent with the maintenance of law and order, taking into account the context of the programme and the wider context of the broadcast.**

### Guidelines

- 5a Programmes should not actively promote serious antisocial or illegal behaviour, including violence, suicide, serious crime and substance abuse.
- 5b The context of the programme and the wider context of the broadcast are important considerations when assessing complaints under this standard. For example, a distinction will usually be drawn between factual, and fictional or dramatic depictions, and the level of public interest in a programme will also be a significant factor.

## STANDARD 6 – DISCRIMINATION AND DENIGRATION

**Broadcasters should not encourage discrimination against, or denigration of, any section of the community on account of sex, sexual orientation, race, age, disability, occupational status or as a consequence of legitimate expression of religion, culture or political belief.**

### Guidelines

- 6a 'Discrimination' is defined as encouraging the different treatment of the members of a particular section of the community, to their detriment. 'Denigration' is defined as devaluing the reputation of a particular section of the community.

- 6b The importance of freedom of expression means that a high level of condemnation, often with an element of malice or nastiness, will be necessary to conclude that a broadcast encouraged discrimination or denigration in contravention of the standard.
- 6c This standard is not intended to prevent the broadcast of material that is:
- factual
  - a genuine expression of serious comment, analysis or opinion
  - legitimate humour, drama or satire.
- 6d Context must always be considered when assessing whether the broadcast 'encouraged' discrimination or denigration, including:
- the nature of the programme and the station
  - the time of broadcast
  - whether the broadcast was live or pre-recorded
  - the use of audience advisories, if any
  - the target and likely audience
  - audience expectations of the station and the programme
  - the public interest in the broadcast.

## STANDARD 7 – ALCOHOL

**In addition to compliance with laws or regulations relating to the promotion of alcohol, broadcasters should observe restrictions on the promotion of alcohol appropriate to the programme genre being broadcast.**

### Guidelines

- 7a Alcohol promotion should be socially responsible and must not encourage consumption by people who are under the legal age to purchase alcohol.
- 7b Alcohol promotion must not occur in programmes specifically directed at children.
- 7c Alcohol promotion must not dominate a broadcast.
- 7d Programmes must avoid advocacy of excessive alcohol consumption.
- 7e Sponsorship must be confined to the brand, name or logo, and exclude sales messages.
- 7f Promos for alcohol-sponsored programmes must primarily promote the programme, with the sponsorship subordinate.
- 7g Broadcasters are not required to exclude alcohol promotion from coverage of an event or situation being broadcast where such promotion is a normal feature of that event or situation. Other guidelines under this standard should be considered.
- 7h Broadcasters must take into account the requirements of the Advertising Standards Authority's Code for Advertising and Promotion of Alcohol when scheduling promos for alcohol-sponsored programmes.

# PART 2

## STANDARDS WHICH RELATE TO INFORMATION BROADCAST

## STANDARD 8 – BALANCE

**When controversial issues of public importance are discussed in news, current affairs or factual programmes, broadcasters should make reasonable efforts, or give reasonable opportunities, to present significant points of view either in the same programme or in other programmes within the period of current interest.**

### Guidelines

- 8a For the standard to apply, the subject matter must be an issue 'of public importance', it must be 'controversial' and it must be 'discussed' in a news, current affairs or factual programme.
- 8b No set formula can be advanced for the allocation of time to interested parties on controversial issues of public importance.
- 8c The assessment of whether a reasonable range of other perspectives has been presented includes consideration of the following, where relevant:
- the programme's introduction and the way in which the programme was presented, for example:
    - o whether the programme purported to be a balanced examination of an issue
    - o whether the programme was clearly signalled as approaching a topic from a particular perspective (eg, authorial documentaries, public access and advocacy programmes, partial or politically aligned programmes)
    - o whether the programme was narrowly focused on one aspect of a larger, complex debate
  - the nature of the discussion (was it a serious examination of an issue, or was the issue raised in a brief, humorous or peripheral way)
  - the nature of the issue/whether listeners could reasonably be expected to be aware of views expressed in other coverage, including coverage in other media (eg, is it an ongoing topic of debate, such that listeners can reasonably be expected to have a broad understanding of the main perspectives on the issue)
  - the likely expectations of the audience as to content
  - the level of editorial control of the broadcaster over the programme content.

## STANDARD 9 – ACCURACY

**Broadcasters should make reasonable efforts to ensure that news, current affairs and factual programming:**

- is accurate in relation to all material points of fact
- does not mislead.

### Guidelines

- 9a The requirement for accuracy does not apply to statements which are clearly distinguishable as analysis, comment or opinion, rather than statements of fact.
- 9b The standard is concerned only with material inaccuracy. For example, technical or unimportant points unlikely to significantly affect the audience's understanding of the programme as a whole are not material.
- 9c In the event that a material error of fact has occurred, broadcasters should correct it at the earliest appropriate opportunity.
- 9d Talkback programmes will not usually be subject to the accuracy standard.
- 9e The assessment of whether the broadcaster has made reasonable efforts to ensure accuracy includes consideration of the following, where relevant:
- the source of material broadcast (eg, whether the programme is produced by a reputable organisation or relies on an authoritative expert)
  - whether the broadcast was live or pre-recorded
  - whether there was some obvious reason to question the accuracy of the programme content before it was broadcast
  - whether the broadcaster sought and/or presented comment, clarification or input from any relevant person or organisation
  - the extent to which the issue of accuracy was reasonably capable of being determined by the broadcaster.

# PART 3

**STANDARDS WHICH  
RELATE TO PEOPLE  
OR ORGANISATIONS  
TAKING PART OR  
REFERRED TO IN  
BROADCASTS**

## STANDARD 10 – PRIVACY

**Broadcasters should maintain standards consistent with the privacy of the individual.**

### Guidelines

- 10a The privacy standard applies only to identifiable individuals. In some cases an individual may be identifiable even if they are not named or shown.
- 10b Broadcasters should not disclose private information or material about an individual in a way that is highly offensive to an objective reasonable person in the position of the person affected.
- 10c There must be a reasonable expectation of privacy in relation to the information or material disclosed. Factors to consider include, but are not limited to, whether the information or material is not in the public domain; and/or it is intimate or sensitive in nature; and/or the individual could reasonably expect it would not be disclosed.
- 10d A person will not usually have a reasonable expectation of privacy in relation to matters in the public domain. In some circumstances, there may be a reasonable expectation of privacy in relation to such information or material even though it is in the public domain.
- 10e Broadcasters should not intentionally intrude upon a person's reasonable expectation of solitude or seclusion in a way that is highly offensive to an objective reasonable person in the position of the person affected.
- 10f It is a defence to a privacy complaint to publicly disclose matters of legitimate public interest. The level of public interest must be proportionate to the seriousness of the breach of privacy in order for the defence to apply.
- 10g It is not a breach of privacy where the person concerned has given informed consent to the disclosure or intrusion. A parent or guardian, or other person aged 18 or over in loco parentis (standing in the shoes of the parent or guardian), can consent on behalf of a child under the age of 16 years, but the broadcaster must be satisfied that the broadcast is not contrary to the best interests of the child.

## STANDARD 11 – FAIRNESS

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

### Guidelines

- 11a A consideration of what is fair will depend on the nature of the programme (eg, news and current affairs, factual, dramatic, comedic or satirical). Context should also be considered, for example, the public significance of the broadcast.
- 11b Participants and contributors should be informed, before a broadcast, of the nature of the programme and their proposed contribution, except where justified in the public interest, or where their participation is minor in the context of the programme.
- 11c Whether informed consent was required or has been obtained from a participant or a contributor may be a relevant consideration in determining whether that participant or contributor was treated fairly (guidance on what constitutes 'informed consent' is found in the privacy guidance at the back of this Codebook).
- 11d If a person or organisation referred to or portrayed in a broadcast might be adversely affected, that person or organisation should usually be given a fair and reasonable opportunity to comment for the programme, before the broadcast. What is 'fair and reasonable' will depend on the circumstances.
- 11e Edited excerpts should fairly reflect the tenor of the overall events or views expressed.
- 11f Broadcasters must not broadcast information obtained by misrepresentation or deception (including by hidden recording device), except where justified by the public interest.
- 11g The use of prank calls as a legitimate expression of humour will usually be acceptable, but caution should be exercised to prevent undue harm to unsuspecting parties.
- 11h Individuals, and particularly children and young people, featured in a programme should not be exploited, humiliated or unfairly identified.
- 11i Where programmes deal with distressing circumstances (eg, grief and bereavement) broadcasters should show discretion and sensitivity.

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# THE FREE-TO-AIR TELEVISION CODE

The following standards apply to all free-to-air television programmes broadcast in New Zealand. Freedom of expression is the starting point in a consideration of complaints. Complaints can only be upheld where the limitation on the right to freedom of expression is reasonable, prescribed by law and demonstrably justified in a free and democratic society.

The standards in this code should be read and interpreted alongside the commentary at the front of the Codebook.

#### **PART 1** Standards which relate to social responsibilities

- Standard 1** Good Taste and Decency
- Standard 2** Programme Information
- Standard 3** Children's Interests
- Standard 4** Violence
- Standard 5** Law and Order
- Standard 6** Discrimination and Denigration
- Standard 7** Alcohol

#### **PART 2** Standards which relate to information broadcast

- Standard 8** Balance
- Standard 9** Accuracy

#### **PART 3** Standards which relate to people or organisations taking part or referred to in broadcasts

- Standard 10** Privacy
- Standard 11** Fairness

# PART 1

## STANDARDS WHICH RELATE TO SOCIAL RESPONSIBILITIES

## STANDARD 1 – GOOD TASTE AND DECENCY

**Current norms of good taste and decency should be maintained, consistent with the context of the programme and the wider context of the broadcast.**

### Guidelines

- 1a The context in which content occurs and the wider context of the broadcast are relevant to assessing whether a broadcast has breached this standard, including:
- the nature of the programme and the channel
  - the programme’s classification and scheduling
  - whether the broadcast was live or pre-recorded
  - the use of audience advisories, if any
  - the target and likely audience
  - audience expectations of the channel and the programme
  - the availability of filtering technology
  - the level of the broadcaster’s editorial control over the content
  - the public interest in the broadcast.
- 1b Where broadcasters take effective steps to inform their audiences of the nature of their programmes, and enable viewers to regulate their own and their children’s viewing behaviour, they are less likely to breach this standard.
- 1c If content is likely to offend or disturb a significant section of the audience, an appropriate audience advisory should be broadcast prior to the content.

## STANDARD 2 – PROGRAMME INFORMATION

**Broadcasters should ensure that programmes are correctly classified and screened in appropriate timebands, and where appropriate, issue an audience advisory where the content of a broadcast may not be suitable for likely viewers.**

### Guidelines

- 2a The following classifications should be broadcast on all content except news, current affairs, sports and live content:

#### **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.*

- 2b Broadcasters should exercise caution when determining the level of AO content to be screened during any transition from G or PGR programming to AO programming, and give careful consideration to children’s interests (Standard 3).
- 2c News, current affairs, sports and live content is not, because of its distinct nature, subject to classification. However, broadcasters must be mindful of children’s interests and other broadcasting standards and include warnings where appropriate.
- 2d If a programme is likely to disturb or offend a significant number of viewers, or programme content is likely to be outside audience expectations, an appropriate audience advisory should be broadcast.
- 2e Promos for programmes should comply with the classification of the programme during which they screen. In the case of unclassified host programmes (including news and current affairs) broadcast in G or PGR time, promos must be classified G or PGR and broadcasters should consider children’s interests (Standard 3).

## STANDARD 3 – CHILDREN'S INTERESTS

**Broadcasters should ensure children can be protected from broadcasts which might adversely affect them.**

### Guidelines

- 3a Material likely to be considered under this standard includes:
- sexual material or themes
  - violent content or themes
  - offensive language
  - social or domestic friction
  - dangerous, antisocial or illegal behaviour
  - material in which children or animals are humiliated or badly treated
  - graphic descriptions of people in extreme pain or distress

which are outside the expectations of the programme's classification.

- 3b Context is an important consideration when assessing complaints under this standard, including the programme's classification, the time of broadcast, the target and likely audience, audience expectations, the public interest in the broadcast and any factors that mitigate the likely harm to children, such as humour or educational benefit.
- 3c When programmes broadcast during children's normally accepted viewing times (see Definitions, page 9) contain material which is outside audience expectations and likely to disturb children, an audience advisory should be broadcast. The advisory should be specific in nature to allow parents or guardians to make an informed choice about their children's exposure to the content, while avoiding detail which itself may disturb or alarm children.
- 3d In news, current affairs and factual programmes, disturbing or alarming material should be justified in the public interest. Broadcasters must use judgement and discretion when deciding the degree of graphic material to be included in news programmes, and should broadcast an audience advisory when appropriate, particularly when children are likely to be viewing.

## STANDARD 4 – VIOLENCE

**Broadcasters should exercise care and discretion when portraying violence. Violent content should be appropriate to the context of the programme, and classified carefully.**

### Guidelines

- 4a Any depiction of, or reference to, violence should be justified by context.
- 4b Broadcasters should be mindful of the cumulative effect of violence or violent incidents and themes, within programmes, and across programme line-ups.
- 4c Broadcasters should exercise caution with content likely to incite or encourage violence or brutality.
- 4d In news, current affairs and factual programmes, where disturbing or alarming material is often shown to reflect a world in which violence occurs, the material should be justified in the public interest.
- Judgement and discretion must be used in deciding the degree of graphic detail to be included in news programmes, particularly when children are likely to be watching.
  - An audience advisory should be used when appropriate.
- 4e Programmes in which rape or sexual violence feature should be treated with care, and broadcasters should use an audience advisory if the content is likely to disturb.
- 4f Content should not include any combination of violence and sex designed to titillate, beyond current socially acceptable community norms.

## STANDARD 5 – LAW AND ORDER

**Broadcasters should observe standards consistent with the maintenance of law and order, taking into account the context of the programme and the wider context of the broadcast.**

### Guidelines

- 5a Programmes should not actively promote serious antisocial or illegal behaviour, including violence, suicide, serious crime and the abuse of drugs.

- 5b The context of the programme and the wider context of the broadcast are important considerations when assessing complaints under this standard. For example, a distinction will usually be drawn between factual, and fictional or dramatic depictions, and the level of public interest in a programme will also be a significant factor.

- the use of audience advisories, if any
- the target and likely audience
- audience expectations of the channel and the programme
- the level of the broadcaster's editorial control over the content
- the public interest in the broadcast.

## STANDARD 6 – DISCRIMINATION AND DENIGRATION

**Broadcasters should not encourage discrimination against, or denigration of, any section of the community on account of sex, sexual orientation, race, age, disability, occupational status or as a consequence of legitimate expression of religion, culture or political belief.**

### Guidelines

- 6a 'Discrimination' is defined as encouraging the different treatment of the members of a particular section of the community, to their detriment. 'Denigration' is defined as devaluing the reputation of a particular section of the community.
- 6b The importance of freedom of expression means that a high level of condemnation, often with an element of malice or nastiness, will be necessary to conclude that a broadcast encouraged discrimination or denigration in contravention of the standard.
- 6c This standard is not intended to prevent the broadcast of material that is:
- factual
  - a genuine expression of serious comment, analysis or opinion
  - legitimate humour, drama or satire.
- 6d Context must always be considered when assessing whether the broadcast 'encouraged' discrimination or denigration, including:
- the nature of the programme and the channel
  - the programme's classification and scheduling
  - whether the broadcast was live or pre-recorded

## STANDARD 7 – ALCOHOL

**In addition to compliance with laws or regulations relating to the promotion of alcohol, broadcasters should observe restrictions on the promotion of alcohol appropriate to the programme genre being broadcast.**

### Guidelines

- 7a Alcohol promotion should be socially responsible and must not encourage consumption by people who are under the legal age to purchase alcohol.
- 7b Alcohol promotion must not occur in programmes specifically directed at children.
- 7c Alcohol promotion must not dominate a broadcast.
- 7d Programmes must avoid advocacy of excessive alcohol consumption.
- 7e Sponsorship must be confined to the brand, name or logo, and exclude sales messages.
- 7f Promos for alcohol-sponsored programmes must primarily promote the programme, with the sponsorship subordinate.
- 7g Broadcasters are not required to exclude alcohol promotion from coverage of an event or situation being broadcast where such promotion is a normal feature of that event or situation. Other guidelines under this standard should be considered.
- 7h Broadcasters must take into account the requirements of the Advertising Standards Authority's Code for Advertising and Promotion of Alcohol when scheduling promos for alcohol-sponsored programmes.

# PART 2

## STANDARDS WHICH RELATE TO INFORMATION BROADCAST

## STANDARD 8 – BALANCE

**When controversial issues of public importance are discussed in news, current affairs or factual programmes, broadcasters should make reasonable efforts, or give reasonable opportunities, to present significant points of view either in the same programme or in other programmes within the period of current interest.**

### Guidelines

- 8a For the standard to apply, the subject matter must be an issue 'of public importance', it must be 'controversial' and it must be 'discussed' in a news, current affairs or factual programme.
- 8b No set formula can be advanced for the allocation of time to interested parties on controversial issues of public importance.
- 8c The assessment of whether a reasonable range of other perspectives has been presented includes consideration of the following, where relevant:
- the programme's introduction and the way in which the programme was presented, for example:
    - o whether the programme purported to be a balanced examination of an issue
    - o whether the programme was clearly signalled as approaching a topic from a particular perspective (eg, authorial documentaries, public access and advocacy programmes, partial or politically aligned programmes)
    - o whether the programme was narrowly focused on one aspect of a larger, complex debate
  - the nature of the discussion (was it a serious examination of an issue, or was the issue raised in a brief, humorous or peripheral way)
  - the nature of the issue/whether viewers could reasonably be expected to be aware of views expressed in other coverage, including coverage in other media (eg, is it an ongoing topic of debate, such that viewers can reasonably be expected to have a broad understanding of the main perspectives on the issue)

- the likely expectations of the audience as to content
- the level of editorial control of the broadcaster over the programme content.

## STANDARD 9 – ACCURACY

**Broadcasters should make reasonable efforts to ensure that news, current affairs and factual programming:**

- **is accurate in relation to all material points of fact**
- **does not mislead.**

### Guidelines

- 9a The requirement for accuracy does not apply to statements which are clearly distinguishable as analysis, comment or opinion, rather than statements of fact.
- 9b The standard is concerned only with material inaccuracy. For example, technical or unimportant points unlikely to significantly affect the audience's understanding of the programme as a whole are not material.
- 9c In the event that a material error of fact has occurred, broadcasters should correct it at the earliest appropriate opportunity.
- 9d The assessment of whether the broadcaster has made reasonable efforts to ensure accuracy includes consideration of the following, where relevant:
- the source of material broadcast (eg, whether the programme is produced by a reputable organisation or relies on an authoritative expert)
  - whether the broadcast was live or pre-recorded
  - whether there was some obvious reason to question the accuracy of the programme content before it was broadcast
  - whether the broadcaster sought and/or presented comment, clarification or input from any relevant person or organisation
  - the extent to which the issue of accuracy was reasonably capable of being determined by the broadcaster.

# PART 3

**STANDARDS WHICH  
RELATE TO PEOPLE  
OR ORGANISATIONS  
TAKING PART OR  
REFERRED TO IN  
BROADCASTS**

## STANDARD 10 – PRIVACY

**Broadcasters should maintain standards consistent with the privacy of the individual.**

### Guidelines

- 10a The privacy standard applies only to identifiable individuals. In some cases an individual may be identifiable even if they are not named or shown.
- 10b Broadcasters should not disclose private information or material about an individual in a way that is highly offensive to an objective reasonable person in the position of the person affected.
- 10c There must be a reasonable expectation of privacy in relation to the information or material disclosed. Factors to consider include, but are not limited to, whether the information or material is not in the public domain; and/or it is intimate or sensitive in nature; and/or the individual could reasonably expect it would not be disclosed.
- 10d A person will not usually have a reasonable expectation of privacy in relation to matters in the public domain. In some circumstances, there may be a reasonable expectation of privacy in relation to such information or material even though it is in the public domain.
- 10e Broadcasters should not intentionally intrude upon a person's reasonable expectation of solitude or seclusion in a way that is highly offensive to an objective reasonable person in the position of the person affected.
- 10f It is a defence to a privacy complaint to publicly disclose matters of legitimate public interest. The level of public interest must be proportionate to the seriousness of the breach of privacy in order for the defence to apply.
- 10g It is not a breach of privacy where the person concerned has given informed consent to the disclosure or intrusion. A parent or guardian, or other person aged 18 or over in loco parentis (standing in the shoes of the parent or guardian), can consent on behalf of a child under the age of 16 years, but the broadcaster must be satisfied that the broadcast is not contrary to the best interests of the child.

## STANDARD 11 – FAIRNESS

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

### Guidelines

- 11a A consideration of what is fair will depend on the nature of the programme (eg, news and current affairs, factual, dramatic, comedic or satirical). Context should also be considered, including the public interest in the broadcast.
- 11b Participants and contributors should be informed, before a broadcast, of the nature of the programme and their proposed contribution, except where justified in the public interest, or where their participation is minor in the context of the programme.
- 11c Whether informed consent was required or has been obtained from a participant or a contributor may be a relevant consideration in determining whether that participant or contributor was treated fairly (guidance on what constitutes 'informed consent' is found in the privacy guidance at the back of this Codebook).
- 11d If a person or organisation referred to or portrayed in a broadcast might be adversely affected, that person or organisation should usually be given a fair and reasonable opportunity to comment for the programme, before a broadcast. What is 'fair and reasonable' will depend on the circumstances.
- 11e Doorstepping an individual or organisation as a means of obtaining comment will normally be unfair, unless all legitimate and reasonable methods of obtaining comment have been exhausted.
- 11f Edited excerpts should fairly reflect the tenor of the overall events or views expressed.
- 11g Broadcasters must not broadcast information obtained by misrepresentation or deception (including by hidden camera or covert recording device), except where justified by the public interest.
- 11h Individuals, and particularly children and young people, featured in a programme should not be exploited, humiliated or unfairly identified.
- 11i Where programmes deal with distressing circumstances (eg, grief and bereavement) broadcasters should show discretion and sensitivity.

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# THE PAY TELEVISION CODE

The following standards apply to all pay television programmes broadcast in New Zealand. ‘Pay’ means television that is for a fee (ie, viewers must pay to view the broadcast signal), whether on a subscription or other transaction basis.

Pay television overall enjoys a less restrictive environment than free-to-air television because of the choice customers make in paying to receive broadcasts. The freedom and capacity of an audience to choose what it views and to be able to prevent children and young people from viewing inappropriate material are significant factors in determining what is, and what is not, acceptable. Violent and potentially offensive material is readily accessible in our society and it follows that some material of this kind will be able to be accessed on television. However, there must be strong protections in place to prevent this material being viewed by children and young people, and strong protections to ensure that it is not inadvertently viewed by those who do not wish to do so. Pay television broadcasters provide these protections through appropriate classifications and warnings, filtering technology, PIN codes and an electronic programme guide.

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.

The standards in this code should be read and interpreted alongside the commentary at the front of the Codebook.

### **PART 1** Standards which relate to social responsibilities

- Standard 1** Good Taste and Decency
- Standard 2** Programme Information
- Standard 3** Children’s Interests
- Standard 4** Violence
- Standard 5** Law and Order
- Standard 6** Discrimination and Denigration
- Standard 7** Alcohol

### **PART 2** Standards which relate to information broadcast

- Standard 8** Balance
- Standard 9** Accuracy

### **PART 3** Standards which relate to people or organisations taking part or referred to in broadcasts

- Standard 10** Privacy
- Standard 11** Fairness

# PART 1

## STANDARDS WHICH RELATE TO SOCIAL RESPONSIBILITIES

## STANDARD 1 – GOOD TASTE AND DECENCY

Current norms of good taste and decency should be maintained, consistent with the context of the programme and the wider context of the broadcast.

### Guidelines

- 1a The context in which content occurs and the wider context of the broadcast are important when assessing whether a broadcast has breached this standard, including:
- the nature of the programme and the channel
  - the programme’s classification
  - where filtering technology is not available, the programme’s scheduling
  - whether the broadcast was live or pre-recorded
  - the use of audience advisories, if any
  - the target and likely audience
  - audience expectations of the channel and the programme
  - the availability of filtering technology
  - the level of the broadcaster’s editorial control over the content
  - the public interest in the broadcast.
- 1b Where broadcasters take effective steps to inform their audiences of the nature of their programmes, and enable viewers to regulate their own and their children’s viewing behaviour, they are less likely to breach this standard.
- 1c If content is likely to offend or disturb a significant number of viewers because it is outside the expectations of the target audience, an effective audience advisory should be broadcast prior to the content.
- 1d Where effective filtering technology is available to the audience, complaints under this standard are less likely to be upheld.
- 1e Explicit adult sex programmes classified 18 may screen only on premium channels.

## STANDARD 2 – PROGRAMME INFORMATION

Viewers should be informed by regular and consistent advice about programme content (including classifications and warnings) and, where available, filtering technology. Broadcasters should ensure that programmes are correctly classified and, if filtering technology is not available, appropriately scheduled.

### Guidelines

- 2a These classifications should be broadcast on all content except news, current affairs, sports and live content:
- 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
- 2b Classifications should screen at the beginning of programmes, be included in electronic programme guides, and accompany printed guides where possible.
- 2c News, current affairs, sports and live content is not, because of its distinct nature, subject to classification. However, broadcasters must be mindful of children’s interests and other broadcasting standards and include advisories where appropriate.
- 2d Audience advisories should be broadcast immediately prior to content which is likely to disturb, distress or offend a significant number of viewers. Audience advisories include:
- C** – content may offend
  - L** – language may offend
  - V** – contains violence
  - S** – sexual content may offend

- 2e Audience advisories should also be included in electronic programming guides and printed guides where possible.
- 2f Audience advisories are not required for content on foreign pass-through channels with no (or little) local editorial intervention.
- 2g Promos for programmes should comply with the classification of the programme during which they screen.
- 2h If filtering technology is made available to customers free of charge, and regularly promoted by the broadcaster for customer use, content classified 18 may screen at any time, provided other applicable broadcasting standards are adhered to.
- 2i Where filtering technology is not made available, content classified 18 may screen only between 8pm and 6am, or 9am and 3pm (other than weekend days, school holidays and public holidays when it may screen only between 8.30pm and 5am).
- 2j The filtering technology may be made available on the basis that customers elect to use it, provided that a customer is easily able to initiate use at any time through the television remote or similar device.
- 2k Content classified 18 may screen at any time on premium channels, provided other applicable broadcasting standards are adhered to.

## STANDARD 3 – CHILDREN'S INTERESTS

**Broadcasters should ensure children can be protected from broadcasts which might adversely affect them.**

### Guidelines

- 3a On pay television, children are frequently protected through security systems, eg, filtering technology. Where these are available, they should be clearly and regularly promoted to customers.

- 3b Material likely to be considered under this standard includes:
  - sexual material or themes
  - violent content or themes
  - offensive language
  - social or domestic friction
  - dangerous, antisocial or illegal behaviour
  - material in which children or animals are humiliated or badly treated
  - graphic descriptions of people in extreme pain or distress

which are outside the expectations of the programme's classification.

- 3c Context must always be considered, including whether filtering technology is available so that parents can protect children from viewing unsuitable content, the nature of the programme and the channel, and the public significance of the broadcast.
- 3d Channels targeted at children should only contain content appropriate for children.
- 3e Content not intended for children's viewing should not be specifically promoted to children and should be screened in accordance with Standard 2 – Programme Information.
- 3f Content classified M or above, especially that containing sexual or violent material, should not screen adjacent to content aimed at children.
- 3g Themes and scenes in fictional content dealing with matters known to disturb children, such as domestic friction or the humiliation or ill-treatment of children, should be appropriately classified and scheduled.
- 3h Any portrayal of realistic violence in content likely to be viewed by children should be scheduled and classified with care.

## STANDARD 4 – VIOLENCE

**Broadcasters should exercise care and discretion when portraying violence. Violent content should be appropriate to the context of the programme, and classified carefully.**

### Guidelines

- 4a The level of editorial control of the broadcaster over programme content will be an important consideration when assessing complaints under this standard. For example, broadcasters exercise no (or little) editorial control over content screened on foreign pass-through channels.
- 4b Broadcasters should exercise caution with content likely to incite or encourage violence. It should be classified carefully and carry audience advisories where necessary, in accordance with Standard 2 – Programme Information.
- 4c In news, current affairs and factual programmes, disturbing or alarming material should be justified in the public interest and carry audience advisories where appropriate.
- 4d Broadcasters must use judgement and discretion when deciding the degree of graphic material to be included in news programmes, and should broadcast an audience advisory when appropriate, particularly when children are likely to be viewing.
- 4e Programmes in which rape or sexual violence feature should be treated with care, and broadcasters should use an audience advisory if the content is likely to disturb.
- 4f Content should not include any combination of violence and sex designed to titillate, beyond current socially acceptable community norms.

## STANDARD 5 – LAW AND ORDER

**Broadcasters should observe standards consistent with the maintenance of law and order, taking into account the context of the programme and the wider context of the broadcast.**

### Guidelines

- 5a Programmes should not actively promote serious antisocial or illegal behaviour, including violence, suicide, serious crime and the abuse of drugs.
- 5b The context of the programme and the wider context of the broadcast are important considerations when assessing complaints under this standard. For example, a distinction will usually be drawn between factual, and fictional or dramatic depictions. The availability of filtering technology and the level of public interest in a programme will be significant factors.

## STANDARD 6 – DISCRIMINATION AND DENIGRATION

**Broadcasters should not encourage discrimination against, or denigration of, any section of the community on account of sex, sexual orientation, race, age, disability, occupational status or as a consequence of legitimate expression of religion, culture or political belief.**

### Guidelines

- 6a 'Discrimination' is defined as encouraging the different treatment of the members of a particular section of the community, to their detriment. 'Denigration' is defined as devaluing the reputation of a particular section of the community.

- 6b The importance of freedom of expression means that a high level of condemnation, often with an element of malice or nastiness, will be necessary to conclude that a broadcast encouraged discrimination or denigration in contravention of the standard.
- 6c This standard is not intended to prevent the broadcast of material that is:
- factual
  - a genuine expression of serious comment, analysis or opinion
  - legitimate humour, drama or satire.
- 6d Context must always be considered when assessing whether the broadcast 'encouraged' discrimination or denigration. Relevant factors include:
- the nature of the programme and the channel
  - the programme's classification
  - where filtering technology is not available, the programme's scheduling
  - whether the broadcast was live or pre-recorded
  - the use of audience advisories, if any
  - the target and likely audience
  - audience expectations of the channel and the programme
  - the availability of filtering technology
  - the level of the broadcaster's editorial control over the content
  - the public interest in the broadcast.

## STANDARD 7 – ALCOHOL

**In addition to compliance with laws or regulations relating to the promotion of alcohol, broadcasters should observe restrictions on the promotion of alcohol appropriate to the programme genre being broadcast.**

### Guidelines

- 7a Alcohol promotion should be socially responsible and must not encourage consumption by people who are under the legal age to purchase alcohol.
- 7b Alcohol promotion must not occur in programmes specifically directed at children.
- 7c Alcohol promotion must not dominate a broadcast.
- 7d In the preparation and presentation of programmes, broadcasters must avoid advocacy of excessive alcohol consumption.
- 7e Sponsorship must be confined to the brand, name or logo, and exclude sales messages.
- 7f Promos for alcohol-sponsored programmes must primarily promote the programme, with the sponsorship subordinate.
- 7g Broadcasters are not required to exclude alcohol promotion from coverage of an actual event or situation being broadcast where promotion is a normal feature of the event or situation. Other guidelines under this standard should be considered.
- 7h Broadcasters must take into account the requirements of the Advertising Standards Authority's Code for Advertising and Promotion of Alcohol when scheduling promos for alcohol-sponsored programmes.

# PART 2

STANDARDS  
WHICH RELATE  
TO INFORMATION  
BROADCAST

## STANDARD 8 – BALANCE

**When controversial issues of public importance are discussed in news, current affairs or factual programmes, broadcasters should make reasonable efforts, or give reasonable opportunities, to present significant points of view either in the same programme or in other programmes within the period of current interest.**

### Guidelines

- 8a For the standard to apply, the subject matter must be an issue 'of public importance', it must be 'controversial' and it must be 'discussed' in a news, current affairs or factual programme.
- 8b No set formula can be advanced for the allocation of time to interested parties on controversial issues of public importance.
- 8c News, current affairs and factual programmes broadcast on foreign pass-through channels, over which the broadcaster retains no (or little) editorial control, are not required to be balanced by the broadcaster.
- 8d The assessment of whether a reasonable range of other perspectives has been presented includes consideration of the following, where relevant:
  - the programme's introduction and the way in which the programme was presented, for example:
    - o whether the programme purported to be a balanced examination of an issue
    - o whether the programme was clearly signalled as approaching a topic from a particular perspective (eg, authorial documentaries, public access and advocacy programmes, partial or politically aligned programmes)
    - o whether the programme was narrowly focused on one aspect of a larger, complex debate
  - the nature of the discussion (was it a serious examination of an issue, or was the issue raised in a brief, humorous or peripheral way)
  - the nature of the issue/whether viewers could reasonably be expected to be aware of views expressed in other coverage, including coverage in other media (eg, is it an ongoing topic of debate, such that viewers can reasonably be expected to have a broad understanding of the main perspectives on the issue)

- the likely expectations of the audience as to content
- the level of editorial control of the broadcaster over the programme content (eg, in foreign pass-through channels).

## STANDARD 9 – ACCURACY

**Broadcasters should make reasonable efforts to ensure that news, current affairs and factual programming:**

- **is accurate in relation to all material points of fact**
- **does not mislead.**

### Guidelines

- 9a This standard does not apply to news, current affairs and factual programmes broadcast on foreign pass-through channels, over which the broadcaster retains little or no editorial control.
- 9b The requirement for accuracy does not apply to statements which are clearly distinguishable as analysis, comment or opinion, rather than statements of fact.
- 9c The standard is concerned only with material inaccuracy. For example, technical or unimportant points unlikely to significantly affect the audience's understanding of the programme as a whole are not material.
- 9d In the event that a material error of fact has occurred, broadcasters should correct it at the earliest appropriate opportunity.
- 9e The assessment of whether the broadcaster has made reasonable efforts to ensure accuracy includes consideration of the following, where relevant:
  - the source of material broadcast (eg, whether the programme is produced by a reputable organisation or relies on an authoritative expert)
  - whether the broadcast was live or pre-recorded
  - whether there was some obvious reason to question the accuracy of the programme content before it was broadcast
  - whether the broadcaster sought and/or presented comment, clarification or input from any relevant person or organisation
  - the extent to which the issue of accuracy was reasonably capable of being determined by the broadcaster.

Broadcasting Standards in New Zealand Codebook

# PART 3

STANDARDS WHICH  
RELATE TO PEOPLE  
OR ORGANISATIONS  
TAKING PART OR  
REFERRED TO IN  
BROADCASTS

## STANDARD 10 – PRIVACY

**Broadcasters should maintain standards consistent with the privacy of the individual.**

### Guidelines

- 10a The privacy standard applies only to identifiable individuals. In some cases an individual may be identifiable even if they are not named or shown.
- 10b Broadcasters should not disclose private information or material about an individual in a way that is highly offensive to an objective reasonable person in the position of the person affected.
- 10c There must be a reasonable expectation of privacy in relation to the information or material disclosed. Factors to consider include, but are not limited to, whether the information or material is not in the public domain; and/or it is intimate or sensitive in nature; and/or the individual could reasonably expect it would not be disclosed.
- 10d A person will not usually have a reasonable expectation of privacy in relation to matters in the public domain. In some circumstances, there may be a reasonable expectation of privacy in relation to such information or material even though it is in the public domain.
- 10e Broadcasters should not intentionally intrude upon a person's reasonable expectation of solitude or seclusion in a way that is highly offensive to an objective reasonable person in the position of the person affected.
- 10f It is a defence to a privacy complaint to publicly disclose matters of legitimate public interest. The level of public interest must be proportionate to the seriousness of the breach of privacy in order for the defence to apply.
- 10g It is not a breach of privacy where the person concerned has given informed consent to the disclosure or intrusion. A parent or guardian, or other person aged 18 or over in loco parentis (standing in the shoes of the parent or guardian), can consent on behalf of a child under the age of 16 years, but the broadcaster must be satisfied that the broadcast is not contrary to the best interests of the child.

## STANDARD 11 – FAIRNESS

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

### Guidelines

- 11a This standard will usually only apply where broadcasts have been locally produced by or on behalf of the broadcaster.
- 11b A consideration of what is fair will depend on:
  - the nature of the programme (eg, news and current affairs, factual, dramatic, comedic or satirical)
  - the public interest in the broadcast
  - the target and likely audience
  - audience expectations
  - whether the programme was live or pre-recorded.
- 11c Participants and contributors should be informed, before a broadcast, of the nature of the programme and their proposed contribution, except where justified in the public interest, or where their participation is minor in the context of the programme.
- 11d Whether informed consent was required or has been obtained from a participant or a contributor may be a relevant consideration in determining whether that participant or contributor was treated fairly (guidance on what constitutes 'informed consent' is found in the privacy guidance at the back of this Codebook).
- 11e If a person or organisation referred to or portrayed in a broadcast might be adversely affected, that person or organisation should usually be given a fair and reasonable opportunity to comment for the programme, before a broadcast. What is 'fair and reasonable' will depend on the circumstances.
- 11f Doorstepping an individual or organisation as a means of obtaining comment will normally be unfair, unless all legitimate and reasonable methods of obtaining comment have been exhausted.
- 11g Edited excerpts should fairly reflect the tenor of the overall events or views expressed.
- 11h Broadcasters must not broadcast information obtained by misrepresentation or deception (including by hidden camera or covert recording device), except where justified by the public interest.
- 11i Individuals, and particularly children and young people, featured in a programme should not be exploited, humiliated or unfairly identified.
- 11j Where programmes deal with distressing circumstances (eg, grief and bereavement) broadcasters should show discretion and sensitivity.

# COMPLAINTS PROCESS AND OTHER GUIDANCE

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# COMPLAINTS PROCESS STEP BY STEP

## DO YOU WANT TO MAKE A FORMAL COMPLAINT?



# GUIDE TO THE BSA COMPLAINTS PROCESS FOR TELEVISION AND RADIO PROGRAMMES

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## What type of programme can I complain about?

You can complain about any programme broadcast in New Zealand on television or radio.

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## When can I complain?

You need to make your complaint within **20 working days of the broadcast**. You cannot complain about a show before it has aired.

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## What will the BSA accept complaints about?

- |  |  |
|--|--|
| ✓ Free-to-air TV programmes  | ✗ Advertising (contact the Advertising Standards Authority)  |
| ✓ Pay TV programmes  | ✗ Programme scheduling (contact the broadcaster)   |
| ✓ Radio programmes   | ✗ Broadcaster websites (contact the broadcaster)   |
| ✓ Programmes viewed or listened to on demand (ONLY if you <b>can</b> supply details of original TV or radio broadcast and lodge your complaint within 20 working days of that broadcast) | ✗ Programmes viewed or listened to on demand – if you <b>cannot</b> supply details of original TV or radio broadcast (contact the broadcaster) |
| ✓ Election advertisements on television or radio (during election periods)   | ✗ News and current affairs on broadcasters' websites, which has not been on TV or radio (contact the Online Media Standards Authority)         |
|  | ✗ Other internet content (contact provider)  |
- 

## What issues can I complain about?

You can complain about the following issues:

- |                                  |            |
|----------------------------------|------------|
| • good taste and decency         | • alcohol  |
| • programme information          | • balance  |
| • children's interests           | • accuracy |
| • violence                       | • privacy  |
| • law and order                  | • fairness |
| • discrimination and denigration |            |

These issues are explained in detail in the Codes of Broadcasting Practice within this Codebook and on our website. The standards and guidelines contained in each code are slightly different according to where the programme was broadcast (radio, free-to-air television, pay television). There is a separate code for election programmes.

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## How do I complain?

To be able to go through the BSA process, complaints have to be 'formal complaints'.

If you just want to let the broadcaster know your concerns, or it is not an issue that can come to the BSA, it will be considered an 'informal complaint'.

Formal complaints have to go to the broadcaster first (unless they are privacy complaints or election programme complaints which can be sent straight to the BSA). Contact details for major broadcasters can be found on the BSA's website, [www.bsa.govt.nz](http://www.bsa.govt.nz).

The simplest way to make a complaint is to complete an online form. Most of the major broadcasters have them. They can be accessed via our website (see, *If you are ready to make a complaint to the broadcaster now*). The BSA also has an online form that you can use if the broadcaster you are complaining about doesn't have one (see, *If you cannot find the broadcaster you're looking for*).

Please note that the formal complaint process can take some time. It is unlikely you will get an instant answer or resolution. If you complain to the broadcaster and then you go on to refer your complaint to the BSA, it could be a number of months after the original date of the broadcast that you get a final decision.

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## What is needed for my complaint to be a 'formal complaint'?

To make a formal complaint certain requirements must be met. A formal complaint must:

- be in writing
  - specify it is a 'formal complaint'
  - be received by the broadcaster within 20 working days of the broadcast
  - include the following details:
    - o date of the broadcast
    - o time of the broadcast
    - o title of the programme
    - o channel or station which broadcast the programme
    - o the standards you think have been breached
    - o an explanation of why you think the standards have been breached.
- 

## What happens to formal complaints to broadcasters?

A broadcaster has **20 working days** to send you a written decision telling you whether or not your complaint has been upheld (ie, whether the programme did breach standards), and advising you of your right to refer your complaint to the BSA if you are not satisfied with its decision. (The broadcaster is allowed to extend the timeframe to **40 working days**, if it lets you know within the initial 20 working days.)

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## When can I refer my complaint to the BSA?

You can refer your complaint to the BSA in any of the following situations within the following timeframes:

### When can I refer?

If you are unhappy with the broadcaster's decision

If the broadcaster has upheld part or all of your complaint and you are unhappy with the action they have taken to address the breach

If you have not heard from the broadcaster within 20 working days of your complaint (or within 40 working days if the broadcaster wrote to you requesting an extension)

### How long do I have to refer?

You have **20 working days** from when you receive the broadcaster's decision

You have **20 working days** from when you receive the broadcaster's decision

You have **60 working days** from the date of the original broadcast

## How do I refer my complaint to the BSA?

You need to write to the BSA asking for a review (by post, or email us at [info@bsa.govt.nz](mailto:info@bsa.govt.nz)).

Or you can complete the Refer a Complaint form on the BSA's website, [www.bsa.govt.nz](http://www.bsa.govt.nz).

If you:

- are unhappy with the broadcaster's decision, you should outline the reasons why
- have not received a decision, you should include the date you lodged your complaint with the broadcaster so that the timeframe can be checked.

## What happens when I have referred my complaint to the BSA?

When you refer a complaint, the BSA will:

- write to you and outline the process
- send a copy of your complaint to the broadcaster for comment, and ask for a recording of the broadcast and for copies of all correspondence relating to your complaint
- make sure that you have an opportunity to comment on any information provided by the broadcaster
- notify you when your complaint is going to be determined (once all the information is received) and when you might expect to receive the BSA's decision.

The Authority's board meets to consider complaints approximately every five weeks. In most cases it will only take one meeting to decide the complaint, and you will receive a decision within 20 working days of the meeting.

Some complaints are more complex. Additional time may be needed to collect more information, consider orders and/or finalise the decision. If that is the case, the BSA team will keep you informed.

Please note that the complaints process – from the referral to the BSA up until the Authority's decision being issued – can take some time, usually several months, or sometimes longer if the case is complex or further information is required.

## Can I get name suppression?

The BSA's written decision will include your name and the decision will be published on the BSA website.

The board only considers requests for name suppression when dealing with privacy complaints, or in other exceptional circumstances. Name suppression is rare.

If you believe there are special reasons why you should receive name suppression, please advise the BSA in writing – you can do this at any time before the decision is released.

If name suppression isn't granted, we will let you know and you may be given an opportunity to withdraw your complaint.

## What orders can the BSA make?

If the BSA upholds a complaint, it may make orders.

If the BSA is considering making an order it will write to you and to the broadcaster asking for your views on whether/what orders are appropriate. It then decides whether to make, or not make, any order, before releasing the final decision. The Authority considers both parties' submissions and takes into account a number of factors including, but not limited to:

- the seriousness of the breach, and the number of upheld aspects of the complaint
- the degree of harm caused to any individual, or to the audience generally
- the objectives of the upheld standard(s)
- the attitude and actions of the broadcaster in relation to the complaint (eg, whether the broadcaster upheld the complaint and/or took mitigating steps; or whether the broadcaster disputed the standards breach and/or aggravated any harm caused)
- whether the decision will sufficiently remedy the breach and give guidance to broadcasters, or whether something more is needed to achieve a meaningful remedy or to send a signal to broadcasters
- past decisions and/or orders in similar cases.

The most common orders are:

- a broadcast statement, eg, a correction, a summary of the decision or an apology
- costs to the Crown (a fine, essentially) of up to \$5,000
- compensation for a breach of privacy, of up to \$5,000
- compensation for a portion of any legal costs reasonably incurred.

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## What happens when the BSA releases a decision?

The written decision will be sent to you and to the broadcaster. You will be asked to keep the decision confidential for a few days until it is publicly released.

The decision is published on the BSA website, and in the monthly BSA newsletter. Sometimes the BSA issues a media statement about a decision of interest. The BSA never releases the contact details of complainants to the media.

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## Can a BSA decision be appealed?

Yes. BSA decisions can be appealed to the High Court, by either party (the broadcaster or the complainant), within one month of the decision.

If a broadcaster appeals a decision to the High Court, the complainant is named as the other party but can choose not to participate in the proceedings.

**FOR MORE INFORMATION YOU CAN GO TO THE BSA'S WEBSITE, [WWW.BSA.GOV.TZ](http://WWW.BSA.GOV.TZ)**

# GUIDANCE: PRIVACY

This guidance is intended to elaborate on the guidelines set out in the privacy standard. It is not exhaustive and may require elaboration or refinement when applied to a complaint. The specific facts of each complaint are especially important when considering whether an individual's privacy has been breached. The BSA will also have regard to developments relating to privacy law in New Zealand and in other jurisdictions.

This guidance has been numbered for ease of reference.

## 1. Who can complain?

- 1.1 Privacy complaints may be brought only in relation to individuals who are identifiable in a broadcast. The Authority is able to accept privacy complaints from people other than the individual whose privacy is alleged to have been breached. However, it retains the discretion to decline to determine any complaint if this is warranted in all the circumstances.
- 1.2 Privacy complaints may only relate to living natural people (Privacy Act 1993).

## 2. Identification required

- 2.1 Privacy will only be breached where the individual whose privacy is at issue is identifiable in the broadcast. Individuals must be identifiable beyond family and close friends who would reasonably be expected to know about the matter dealt with in the broadcast (see BSA decision *Moore and TVWorks Ltd*, 2009-036).
- 2.2 Broadcasters that take steps to mask a person's identity to avoid a privacy breach must take care that the masking is effective. In some cases, where there is a unique combination of identifying features within the broadcast, merely masking the person's face will sometimes be inadequate (for example, see BSA decision *DS and Television New Zealand Ltd*, 2011-144).
- 2.3 In some circumstances, a combination of information inside the broadcast and other readily available material or information from outside the broadcast may enable identification.

## 3. Reasonable expectations of privacy

- 3.1 A person will usually not have a reasonable expectation of privacy in relation to matters of public record, such as matters that occur in open court or matters that have recently been given widespread media coverage. In some circumstances, there may be a reasonable expectation of privacy in relation to information even though it is in the public domain.
- 3.2 In general, a person will not have a reasonable expectation of privacy in a public place. Public places are places that are generally accessible to, and/or in view of, the public.
- 3.3 In exceptional circumstances a person may still have a reasonable expectation of privacy in a public place. This could include situations where it is obvious from the circumstances that the individual is particularly vulnerable, for example:
  - people who are caught up in emergencies
  - victims of accidents
  - those suffering a personal tragedy
  - those with learning difficulties
  - those with mental health issues
  - the bereaved
  - people with brain damage or forms of dementia
  - people who have been traumatised or who are sick or terminally ill.

## 4. Public figures

- 4.1 Public figures, particularly those exercising public power, and others who seek publicity, generally have lower reasonable expectations of privacy in relation to matters pertaining to their public roles.

## 5. Children's privacy

- 5.1 For the purposes of the privacy standard, a child is under the age of 16.
- 5.2 Children, including children of public figures, generally have high reasonable expectations of privacy.
- 5.3 A parent or guardian, or other person aged 18 or over in loco parentis (standing in the shoes of the parent or guardian), can consent on behalf of a child under the age of 16 years to the broadcast of private matters, but the broadcaster must be satisfied that the broadcast is not contrary to the best interests of the child.

## 6. Highly offensive intrusions and disclosures

- 6.1 The means by which private material is gathered affects the offensiveness of the intrusion or disclosure. For example, it may be highly offensive to broadcast private material gathered by surreptitious, deceptive or dishonest means.
- 6.2 Disclosure of private facts is likely to be highly offensive where:
- it is done for the purpose of encouraging harassment
  - the material is particularly embarrassing, sensitive or traumatic, or has the potential to impact negatively on reputation
  - the person is particularly vulnerable
  - the broadcast is exploitative or gratuitous
  - the person concerned has made efforts to protect his or her privacy, or has not consented to the broadcast.

## 7. Informed consent

- 7.1 Informed consent is provided where a person identifiable in a broadcast:
- is aware he or she is contributing to the broadcast
  - understands the true context and purpose of the contribution
  - understands the nature of the consent and its duration
  - freely agrees to contribute.
- 7.2 The level of consent required may vary depending on the type of programme and the particular circumstances in each case.
- 7.3 Where there is reason to doubt the person's capacity to understand the consequences of his or her contribution (for example, when the person is mentally impaired or intoxicated), the broadcaster must take particular care to ensure that the person is capable of providing informed consent and understanding the potential ramifications of participating in the broadcast.
- 7.4 Only the person whose privacy is in issue, or in the case of a child, their parent, guardian or person over 18 acting in loco parentis (standing in the shoes of the parent or guardian), can give consent.
- 7.5 In general, consent must be written, recorded, or obvious from the circumstances. What is 'obvious from the circumstances' will be a matter for interpretation and depend on the specific facts of the case.
- 7.6 The greater the invasiveness of the broadcast, the more care the broadcaster must take to ensure informed consent is obtained.

## 8. Legitimate public interest

- 8.1 A matter of legitimate public interest is 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.
- 8.2 Matters of legitimate public interest may include matters such as:
- criminal matters, including exposing or detecting crime
  - issues of public health or safety
  - matters of politics, government or public administration
  - matters relating to the conduct of organisations which impact on the public
  - exposing misleading claims made by individuals or organisations
  - exposing seriously antisocial and harmful conduct
- (see BSA decision *Balfour and Television New Zealand Ltd*, 2005-129).
- 8.3 The degree of public interest in the material broadcast must be proportionate to the gravity of the breach of privacy, in order for the broadcaster to rely on public interest as a defence to the breach (see BSA decision *MA and Television New Zealand Ltd*, 2010-084).
- 8.4 The public interest must relate to the disclosure of the particular information or recording that is alleged to breach privacy (see BSA decision *Russek and Television New Zealand Ltd*, 2007-016). However, the public interest in the programme or series as a whole will also always be considered.

## 9. Intrusion upon solitude or seclusion

- 9.1 Solitude is the state of being alone. Seclusion is a state of screening or shutting off from outside access or public view. A person does not need to be alone to have an interest in seclusion (see High Court judgment *CanWest TVWorks Ltd v XY*, HC Auckland CIV-2006-485-2633).
- 9.2 A person will usually have an interest in seclusion when at home. They may also have an interest in seclusion in their home or on their property even when they are not there.
- 9.3 Hidden cameras will usually be regarded as intrusive but each case depends on its particular circumstances. The purpose of covert filming will be relevant; a purpose which is strongly in the public interest may justify the use of a hidden camera.

# GUIDANCE: ACCURACY – DISTINGUISHING FACT AND ANALYSIS, COMMENT OR OPINION

The accuracy statement (Standard 9) only applies to fact. It does not apply to analysis, comment or opinion.

A fact is verifiable: something that can be proved right or wrong. So, 'National has 60 seats in Parliament' is a statement of fact.

An opinion is someone's view. It is contestable, and others may hold a different view. So, 'This decision is disastrous' is a comment. It expresses a value judgement by the speaker. 'The Minister always declines to be interviewed on this topic. I think he must have something to hide,' is a comment, although a different sort of comment. It is a conclusion drawn by the speaker from the facts in the first sentence.

News analysis usually contains both sorts of opinion. It interprets news, offers criticism, provides possible reasons and predicts possible consequences.

However, it is not always so clear whether a statement is an assertion of fact or an opinion. If you say that certain health professionals are promoting 'bogus treatments', are you stating a fact or simply commenting or giving your opinion? It all depends on context and presentation. It is crucial how a reasonable viewer or listener would perceive it.

The following matters are relevant, although not decisive, in determining whether a statement is fact or opinion:

- The language used. 'I think' usually means it is an opinion.

- The language used in the rest of the item. If most of the statements in the item are opinions, it is likely this one is too. However, that will not always be the case – there could be a statement of fact within an opinion piece or surrounded by opinions.
- The type of programme and the role or reputation of the person speaking. For example, a statement made in a panel discussion, a film review or a programme hosted by a person of known outspoken views, is more likely to be opinion.
- The subject matter. Some subjects are notoriously controversial – climate change and alternative medicine, for instance. Statements about them could well be opinion.
- Whether evidence or proof is provided. The audience is more likely to interpret a statement as fact if supporting evidence is given.
- Whether the statement is attributed to someone. 'Mr Jones, a resident in the area, said the flooding is due to the earthquakes' is more likely to be treated as an opinion than a bare unattributed assertion to the same effect would be.

However, none of these factors is conclusive. Every case must be assessed on its merits.

# GUIDANCE: BSA POWER TO DECLINE TO DETERMINE A COMPLAINT

Section 11 of the Broadcasting Act 1989 authorises the BSA to decline to determine a complaint which has been referred to it if it considers:

- that the complaint is frivolous, vexatious or trivial – section 11(a); or
- that, in all the circumstances of the complaint, it should not be determined by the Authority – section 11(b).

The purpose of this section of the Codebook is to provide guidance to complainants and broadcasters about the usual way section 11 is interpreted and applied by the BSA.

## Comment

In the BSA's view, the policy behind section 11 is that the time and resources of the Authority, which are, in the end, sustained by the people of New Zealand, should not be wasted on having to deal with matters which objectively have no importance.

The complaints system under the Broadcasting Act is an open door system. Broadcasters are required to receive and consider all complaints that meet the relevant criteria for being a valid formal complaint. The BSA usually expects broadcasters to deal with complaints they receive in a considered and appropriately comprehensive way. It does not expect a comprehensive analysis of a complaint when, on its face, it is frivolous or trivial. The BSA is conscious that there is an economic cost in dealing with complaints and it does not wish to see resources wasted on complaints that have no foundation whatsoever.

All complaints which are then referred by a complainant to the BSA need to be considered by the Authority but with the qualification that if they are considered to come within section 11 they need not be determined.

## BSA decisions

The following summaries and examples demonstrate the BSA's approach in decisions declining to determine a complaint (cited by decision number; all decisions are available on the BSA's website, [www.bsa.govt.nz](http://www.bsa.govt.nz)).

### **Section 11(a): Frivolous, vexatious or trivial**

The BSA will usually apply the ordinary meanings of the words frivolous, vexatious or trivial. Obviously, there is some overlap in the meanings of these terms.

A *frivolous* complaint is one which the BSA considers to be unworthy of being treated in the same way in which it would treat a complaint which is not frivolous or which has some merit. Frivolous means not serious or sensible, or even silly.

A *trivial* complaint is one which is of little or no importance and is at such a level not to justify it being treated as a serious complaint.

Examples of complaints that the BSA has declined to determine on the basis they were frivolous or trivial include:

### *Trivial accuracy complaints*

- a complaint that promos for upcoming programmes containing the word 'next' were inaccurate, because there were advertisements between the programmes (2007-095)
- a complaint that a reference to 'government superannuation' was inaccurate as it should have referred to 'New Zealand superannuation' (2009-164)
- a complaint that the meaning of the phrase '50 times less power' was unclear and therefore inaccurate (2009-150)
- a complaint that a reference to a '31 per cent difference' in men's and women's pay was inaccurate (2010-015)
- a complaint that a reference to 'wind chill factor' did not indicate which temperature measurement was being used (2010-033)
- a complaint that a reference to Prince William as 'the next King of England' was inaccurate because he was also the next King of New Zealand (2011-004)
- a complaint that a reference to a train 'engine' was inaccurate (2011-009)
- a complaint that a reference to a search area should have been in square nautical miles, not kilometres (2010-055)
- a complaint that the phrase Police 'force' was inaccurate because the police were not part of the Armed Forces (2011-067)
- a complaint that a reference to 'an area of around 15,000 rugby fields' was inaccurate because that was not a proper area measurement (2012-100)
- a complaint that a reference to colony cages for hens being '4cm more than conventional cages' was inaccurate (2012-100).

### *Complaints about low-level language*

- a complaint about the word 'bugger' in a factual travel programme (2011-084)
- a complaint about the word 'damn' in an election advertisement (2011-143)
- a complaint about the use of the word 'gay' in a news item, to mean 'homosexual' (2011-118).

### *Other frivolous/trivial matters*

- a complaint that an election advertisement which used a voiceover by a child was inappropriate because children are not allowed to vote (2011-158)
- a complaint that a news item containing footage of a reporter walking backwards was dangerous and breached standards of law and order (2012-100).

A *vexatious* complaint, on the other hand, is one which has been instituted without sufficient justifying grounds. In some cases, a person putting forward a vexatious complaint may do so with the intention of causing annoyance, but such an intention may not be necessary in order for a complaint to be considered vexatious.

The BSA is usually reluctant to label a complainant vexatious; however, examples of complaints that the BSA considered to be vexatious include:

- A complainant misheard the broadcast, received an adequate response from the broadcaster to that effect, but still proceeded with a referral to the Authority (2008-035).
- Complainants repeatedly referred complaints about the same issue, even though their earlier complaints had been dismissed and comprehensive reasons given (2012-104, 2011-087).

**Section 11(b): In all the circumstances, the complaint should not be determined**

Additionally, in terms of section 11, there may be other good reasons for the BSA to decline to determine a complaint. Examples include:

- the complaint is based merely on the complainant's personal preferences (see section 5(c) of the Broadcasting Act 1989), or is a matter of editorial discretion, which broadcasters are entitled to exercise:
  - o complaints that programmes about the Treaty of Waitangi and New Zealand flags omitted certain facts (2010-009, 2011-055, 2011-087, 2011-170)
  - o a complaint that news programmes failed to report certain stories (2010-086)
  - o a complaint that an interview about Olympic drug cheating referred to Jamaica but did not discuss New Zealand's alleged cheating history (2012-109)
  - o a complaint that a news item reported differently on an event than a BBC item about the same topic (2012-117)
- the complaint raises matters which are incapable of being addressed as issues of broadcasting standards, the grounds of the complaint are unclear, or the complainant misheard or misunderstood the broadcast (2008-127, 2010-002, 2010-048)
- the complaint relates to material outside the Authority's jurisdiction, such as printed internet content or on demand content (2010-070)
- a recording of the broadcast is unavailable or incomplete, or cannot be located because the content of the complaint does not correspond with any broadcast at the time specified in the complaint (2007-051, 2010-068, 2010-129, 2011-102, 2012-093, 2012-117).

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## BSA RETAINS ULTIMATE DISCRETION

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This section is intended to provide a guide only, and does not bind the BSA in determining the outcome of any future complaint. The BSA retains overall discretion and each complaint is determined on its particular facts.

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# GUIDANCE: COSTS AWARDS TO COMPLAINANTS

This section of the Codebook is designed to give guidance to complainants and broadcasters on the issue of costs awards.

Section 16(1) of the Broadcasting Act 1989 provides:

...the Authority may, in any proceedings, order any party to pay any other party such costs and expenses (including expenses of witnesses) as are reasonable, and may apportion any such costs between the parties in such manner as it thinks fit.

Costs awards are ordinarily to recompense in part a successful complainant for legal costs which have been incurred (but may be costs other than legal fees incurred during the complaints process).

## Principles

There are some principles which we wish to apply when we consider applications for orders of costs, and these include the following:

- This is a jurisdiction which needs to be, as far as possible, accessible to participants without the need for legal advice and legal help in the preparation and presentation of submissions.
- We recognise and respect the freedom of complainants and broadcasters to involve their lawyers but they need to recognise that any recompense for costs cannot be assumed to follow.
- There will be exceptional cases where the assistance of lawyers will be desirable and appropriate and in these cases, issues of costs will properly arise.

## Amount of costs

In all but the most exceptional cases, the most that is likely to be recoverable in an award of costs is a contribution to the costs actually incurred.

Different lawyers have different methods of fees assessment, different levels of relevant skills and experience, and different approaches to the work that they do. Different complainants have different approaches to the extent that their lawyers need to be involved and to the extent of their willingness to accept the impact of fees. In these circumstances, and in this jurisdiction, fees charged by lawyers to complainants vary widely and we are not able to approach the quantification of costs awards solely or substantially by judging what proportion of actual costs should be allowed.

Moreover, what costs are 'reasonable' as between the complainant and the complainant's lawyer is not something which we are ordinarily able to judge as we would usually have insufficient detail about the work requested, what was done, and what was involved in the work being done. We do, however, ask complainants to provide invoices for any legal costs incurred.

In these circumstances, our approach to the quantification of an award of costs must be broad brush and objective, and must take into account a range of factors.

### The factors

The factors which we will take into account when considering any application for costs in favour of a successful complainant and in quantifying any such order will include the following:

- the complexity of the issues raised
- the number of issues raised
- the complexity of the factual background
- the number of substantive submissions that needed to be made
- whether the proceeding required resolution of any interlocutory or procedural issues
- the need for the complainant to have incurred costs to the extent that costs were incurred or at all
- the amount of costs incurred
- the nature and importance of the complaint to the complainant
- the public interest in the complaint.

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## BSA RETAINS ULTIMATE DISCRETION

This section is intended to provide a guide to the principles the BSA will consider in determining whether or not to award costs and, if so, the amount of any award. The BSA retains overall discretion and in any particular case may take into account such factors as it thinks should fairly and appropriately be taken into account.

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