

External Review of Broadcasting Standards Authority Decisions: Accuracy Standard



A Report Prepared for the BSA by
Peter A. Thompson, June 2025

1.0 Terms of Reference

The Broadcasting Standards Authority periodically requires an external review of the Authority's decisions taken in response to complaints about breaches of the Broadcasting Standards. Peter Thompson¹ was contracted as the reviewer to prepare a report concerning the Accuracy Standard as specified in the Code of Broadcasting Standards in New Zealand and as applied in five cases involving consideration of this standard in 2024.

The five cases to be reviewed are:

- a) Pack-Baldry, Palestine Solidarity Network Aotearoa, Taylor-Moore & Wellington Palestine Group and Television New Zealand Ltd - 2024-040 (12 November 2024)
- b) Al-Jiab and Television New Zealand Ltd - 2024-058 (4 December 2024)
- c) Zaky and Radio New Zealand Ltd - 2024-004 (20 March 2024)
- d) McGlone and Television New Zealand Ltd - 2024-074 (4 December 2024)
- e) Wilson and NZME Radio Ltd - 2023-085 (8 April 2024)

The report considers whether the Authority's reasoning, processes and/or interpretations of the Accuracy Standard were appropriate and reasonable in each case. This will include comment on:

- The legal robustness of the decisions, including the Authority's assessment of freedom of expression.
- Whether the Authority's application of the relevant standard was reasonable and appropriate.
- Whether the Authority reached the right outcome in each of the decisions, with reference to the Accuracy Standard.
- Where the author does not agree that the Authority reached the right outcome, whether the Authority's reasoning nevertheless supports the outcome reached.
- Any perceived deficiencies in the Authority's reasoning.
- The degree to which the decisions provide useful guidance and clarity on the Authority's approach to accuracy complaints.
- The consistency of approach (where possible given the small sample size).
- Consideration of how far the Authority needs to provide an account of its deliberations for every aspect of a complaint in respect to every conditionality under the Accuracy Standard Guidelines, particularly where the question of whether a broadcast is materially inaccurate or materially misleading is clear.

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2.0 Preamble: Why accuracy is not simple

Reliable news, current affairs and other factual content are vital components of any healthy democracy, and the Code of Broadcasting Standards accordingly requires broadcast content to adhere to the standards of accuracy and balance. Accuracy might seem an obvious and perhaps very basic requisite of factual programming. However, ascertaining where programmes meet the standard or fall short is often a complicated exercise.

The popular conception of news is that it should hold up a 'mirror' to events in the world and reflect- or at least attempt to reflect- those events with a minimum of distortion so as to give the facts 'straight' to the public. It has long been recognised that such expectations are based on an oversimplified notion of social reality and that news is a socially-constructed artifact². The significance and meaning of events reported depends on a range of cultural, economic and political assumptions which (in some instances) can potentially shape the events being reporting. There are several aspects of news production, representation and interpretation to consider in approaching the question of accuracy:

- a) How news producers decide what is 'news-worthy' given the multitude of potential events and issues that could potentially be reported³. Although reports can be driven by events (e.g. natural disasters), the organisation of the 'newsbeats' which define routinised patterns of reporting suggest that certain events are pre-selected and even shaped by the presence of the media (e.g. press conferences). Put simply, news events have a remarkable propensity to occur where there is a journalist around to report them.
- b) How such events and issues are verified, interpreted and represented in media reports. Events do not simply 'speak for themselves'- they have to be *made* meaningful through the process of reporting⁴. For example, reporting an extreme weather event permits verification of its occurrence as a physical event by eye-witnesses or recordings. But determining the extent of any damage or the number of casualties is a more complex exercise and likely to resist definitive verification in the immediate aftermath. Likewise, explaining whether the extreme weather event is attributable to anthropogenic climate change or some random atmospheric phenomenon entails expert verification and knowledge not available to most reporters.
- c) How the reports of events and issues prioritise particular news angles or 'frames' which provide the audience with the contextual cues to enable the audience to discern their significance and form opinions about them. There are different levels of framing, both in the tacit assumptions about what subgenre of news issue is being reported and the conventions of reporting which shape which facts/themes are narrated (e.g. electoral reporting often invites commentary and polling on the 'horse race').
- d) On another level, how frames can prioritise aspects of an issue or event which make interpretative and normative assumptions on behalf of the audience⁵. For example, a cross-border military incursion could be framed as aggression or self-defence; civilian casualties could be framed as collateral damage or as war crimes or genocide; the actions could be explained in macro-historical context, or in terms of the immediate human consequences in microcosm. On this level,

² For example, see Charnley, M. V. (1936). Preliminary Notes on a Study of Newspaper Accuracy. *Journalism Quarterly*, 13(4): 394-401. <https://doi.org/10.1177/107769903601300403>

Also see - Porlezza, C. (2019). Accuracy in Journalism. In: *Oxford Research Encyclopedia of Communication*. . Oxford University Press. <https://openaccess.city.ac.uk/id/eprint/22556/> And- Wien, C. (2005). Defining Objectivity within Journalism- an overview. *Nordicom Review* 26(2): 3-15. <https://sciendocom/article/10.1515/nor-2017-0255>

³ For example, see Manning, P. (2001). *Theorising news media and news sources* (pp. 19-49). SAGE Publications Ltd, <https://doi.org/10.4135/9781446218082.n2> Also see- Molotch, H., & Lester, M. (1974). News as Purposive Behavior: On the Strategic Use of Routine Events, Accidents, and Scandals. *American Sociological Review*, 39(1): 101-112. <https://doi.org/10.2307/2094279>

⁴ For example see Tuchman, G. (1973). Making News by Doing Work: Routinizing the Unexpected. *American Journal of Sociology*, 79(1): 110-131. <http://www.jstor.org/stable/2776714> Also see- Vreese, C.H. (2005) News framing: Theory and typology. *Information Design Journal* 13(1):51 – 62. <https://doi.org/10.1075/idjdd.13.1.06vre>

⁵ For example, see Entman, R. (1993). Framing: Toward Clarification of a Fractured Paradigm. *Journal of Communication* 43(4): 51-58. <https://doi.org/10.1111/j.1460-2466.1993.tb01304.x> Also see- Hallahan, K. (1999). Seven Models of Framing: Implications for Public Relations. *Journal of Public Relations Research*, 11(3), 205-242. https://doi.org/10.1207/s1532754xjpr1103_02

news frames are more likely to be contested, particularly where the selection of voices deemed to offer authoritative definition overlook valid alternatives.

e) How audiences engage with factual content and can derive meanings which differ from journalistic framings. It has long been recognised that audiences are not passive in their reception of media content. The production or 'encoding' of content such as news may be structured so as to invite a 'preferred' reading whereby the audience accepts the prioritised facts, frames and voices as true and valid. However, this is by no means guaranteed and the experience, values and knowledge of the audience always influence interpretation or 'decoding'. Such responses might include uncertainty, partial acceptance or outright opposition to the way the news is presented⁶.

Such considerations become important when assessing claims about the accuracy or inaccuracy of factual content. Representations of events and issues are always subject to selectivity and framing, whether unconscious or deliberate. This does not imply the representation is inaccurate or necessarily misleading (although a report could be *accurate* but still *misleading* if it omitted materially significant facts or frames). Even if the objective physical facts can be verified and agreed upon, there is no single account of events which perfectly encapsulates everything that is factual and true about an event or issue. Recognising such complexities is not a capitulation to complete relativism where every party is able to claim to have equally-valid 'alternative facts'.

On the contrary, as John Burrows' 2022 review of the Accuracy Standard for the BSA⁷ observed, there has been a proliferation of disinformation and forms of fake news which have led to a range of harmful outcomes when some segments of the public have believed and acted on it. Although much of this problematic material stems from online sources, there are numerous overseas channels carried by domestic broadcasters which cannot be assumed to be committed to the same standards as local news providers (which generally adhere to the standards and principles of the BSA and the NZ Media Council). Upholding freedom of expression while preventing or redressing harms stemming from materially misleading content is where the Accuracy Standard plays a critical regulatory role.

3.0 The Accuracy Standard⁸

The 1989 Broadcasting Act⁹ sets out the functions of the Authority (section 21) including the requirement to (21e): *encourage the development and observance by broadcasters of codes of broadcasting practice appropriate to the type of broadcasting undertaken by such broadcasters, in relation to* (21e (iii)) *'fair and accurate programmes and procedures for correcting factual errors and redressing unfairness.'*

The overall purpose of the Standards is to prevent or minimise harms to the public, while ensuring that any restriction does not undermine the right to freedom of expression. As the Codebook explains (p.3-4), *'when standards are not followed harm can result which may justify limiting the right to freedom of expression. [...] The New Zealand Bill of Rights states this should only occur when it is 'demonstrably justified in a free and democratic society'.*

The specifics of the Accuracy Standard are otherwise determined by the Authority and subject to periodic revisions and refinements in consultation with stakeholders. Since the publication of Burrows' 2022 previous review of the Authority's decisions related to the Accuracy Standard, the separate codes for radio, free-to-air television and pay-television codes have been condensed into a single code (although some distinctions remain, e.g. talk-back radio and time-bands for free-to-air TV).

⁶ For example, see Morley, D. & Brunson, C. (1999): *The Nationwide Television Studies*. London: Routledge.

⁷ Burrows, J. (2022). Review of Accuracy Decisions. Report Commissioned by the Broadcasting Standards Authority. https://www.bsa.govt.nz/assets/Research-reports/External-Review-of-Accuracy-Decisions-2022_Final-Report.pdf

⁸ BSA (2022a) Code of Broadcasting Standards in New Zealand : <https://www.bsa.govt.nz/broadcasting-standards/broadcasting-code-book-2022/the-Codebook/>

⁹ NZ Legislation (2022). Broadcasting Act 1989. <https://www.legislation.govt.nz/act/public/1989/0025/latest/DLM155365.html>

The basic accuracy requirements (6.0) in the revised Codebook state that:

'Broadcasters should make reasonable efforts to ensure news, current affairs and factual content:

- *is accurate in relation to all material points of fact.*
- *does not materially mislead the audience (give a wrong idea or impression of the facts).*

In the event a material error of fact has occurred, broadcasters should correct it within a reasonable period after they have been put on notice.'

As the BSA Codebook Guidelines indicate (6.1), content that is identified as analysis, comment or opinion does not generally fall under the Accuracy Standard. Nevertheless, the 2022 Codebook states that, *'broadcasters should still make reasonable efforts to ensure analysis, comment or opinion is not materially misleading with respect to any facts: referred to; or upon which the analysis, comment or opinion is based.'*

The 2022 revisions to the Codebook are nuanced rather than fundamental, but as the cases being reviewed will demonstrate, some Authority decisions may hinge on interpretations of whether a broadcaster could or should have endeavoured to ensure content was not misleading, or whether there is a need to correct material errors even when there is no technical breach of the standard's first component (the obligation to use reasonable efforts to ensure accuracy).

4.0 Approach to the Review of the Authority Decisions

In each of the five cases to be reviewed, recordings of the original broadcast material were made available to the reviewer. These were reviewed alongside the Authority's decisions, which include a transcript of the relevant sections being disputed, consideration of how the complaints were categorised in respect to the standards, the broadcasters' respective responses, and the deliberations of the Authority in making their decision.

The process followed in each case was as follows. The original programme material was reviewed before reading the complaints and the Authority deliberations. The reviewer then considered whether there are any obvious grounds for complaint under the Accuracy Standard before examining the decisions. This was to ensure that the reviewer's own perceptions of each case were not 'primed' by prior knowledge of the Authority's determinations. The review then considered-

- a) whether the complaint appeared to have merit according to the Accuracy Standard, i.e. there was a potential for the broadcast material to be considered materially misleading.
- b) whether the broadcaster's response appeared to provide a justification for not upholding the complaint, or if upheld, whether their response adequately addressed the concerns raised.
- c) whether the Authority's determinations were correct and consistent with the application of the standards and the guidelines in the Codebook, and;
- d) whether the Authority's determinations to uphold or not uphold complaints were justified in respect to their reasoning and consideration of the evidence.

The focus of the discussion in each case will be on the Authority's decisions. The five cases are then considered as a whole in respect to the overall consistency of the Authority's decisions and the application of the Accuracy Standard.

5.0 Case 1: Pack-Baldry, Palestine Solidarity Network Aotearoa, Taylor-Moore & Wellington Palestine Group and Television New Zealand Ltd - 2024-040

This case entailed four complaints (from multiple parties) in respect of two Q+A programmes broadcast by TVNZ. Both broadcasts comprised extended interviews hosted by Jack Tame, the first with Ran Yaakoby, the Israeli ambassador to New Zealand (21 April); the second with Dr. Izzat Salah Abdulhadi, the head of the Palestinian Delegation to New Zealand (5 May). It is the most detailed and complicated case under consideration, and the subject matter entails a number of considerations which are instructive for two of the other cases. The case therefore merits extensive discussion.

Both interviews focused on the Israeli military actions in Gaza following the Hamas-led attack on Israel in October 2023. The interviews were recorded but were free-flowing and discussed a range of issues concerning the conflict, inviting the respective interviewees to comment, sometimes at length, on matters including the numbers of civilian casualties, the apportioning of blame for the Hamas and IDF attacks, the role of other state actors such as Iran, and the moral/legal status of the military actions on either side, including allegations of genocide or terrorism.

Q+A is a current affairs programme so it is generally subject to the Accuracy Standard. The interviews were clearly intended to elicit the official perspectives of the Israeli ambassador and the head of the Palestine Delegation of New Zealand¹⁰. As such, the format of the programme entailed comment, opinion and analysis although, as the Codebook notes (6.1), such content can still be subject to the standard if statements are made that are '*materially misleading with respect to any facts: referred to; or upon which the analysis, comment or opinion is based.*' The fact that the two interviews in question engaged a single person representing a particular side in the Gaza conflict might invite questions about the balance of perspectives¹¹ and the accuracy of the respective claims made.

The complaints were made under the *accuracy, balance, fairness, offensive and disturbing content, and discrimination and denigration* standards. The Accuracy Standard is the sole focus here, although in places it is difficult to disentangle entirely from the other standards (particularly balance). The Authority did not uphold any of the four complaints in respect to any of the standards.

Simon Pack-Baldry, Karyn Taylor-Moore, John Minto (on behalf of Palestine Solidarity Network Aotearoa) and Serena Moran (on behalf of Wellington Palestine Group) all complained about the Q+A broadcasts under the Accuracy Standard, although these were primarily focused on the first interview with Yaakoby. Numerous points in the Q+A programmes were highlighted as misleading and harmful by the complainants, with key examples summarised and paraphrased below:

5.1 The Complaints

- *The interview constituted Israeli propaganda, lies, and misinformation and gave a platform to a country committing genocide.*
- *Misinformation results in public misunderstanding and decreases the pressure on Israel to account for its war crimes.*
- *Tame did not challenge Yaakoby's comments sufficiently to offset their misleading impact, appeared to validate some misleading statements such as Hamas disarmament leading to peace, and used inconsistent language to describe Israeli and Palestinian deaths.*
- *Various parts of the interviews were inaccurate or misleading, including claims that Hamas committed rape, necrophilia, beheading babies, etc. that Hamas employed human shields, that Hamas was hijacking aid trucks, that Israel had allowed civilians three weeks to move to safe areas, the denial of famine in Gaza and claims about the legal status of Israeli actions including the ICJ's ruling on genocide.*
- *Omission of the various historical and contextual factors contributed to a misleading impression of Israel, Palestinians, and the current conflict.*
- *In respect to the Abdulhadi interview: Tame's reference to Hamas' intention to destroy Israel was misleading because it was based on a superseded 1988 Hamas charter not the revised 2017 version which allows for a two-state solution.*
- *Some video footage used did not depict the relevant events.*

5.2 TVNZ's Response

Television New Zealand Ltd. declined to uphold the complaints, although it acknowledged two factual errors: a) Regarding the use of video footage of Gaza in a segment referring to the Hamas-led attacks on Israel, TVNZ insisted this was corrected in a timely manner and therefore did not breach the standard, and b) In regard to the number of people killed by the Hamas-led attack, credible sources put the number of deaths on October 7 as being 1269.

¹⁰ It was clearly noted in the opening segments of the broadcast that the issues being covered were highly sensitive and that TVNZ's aim was to cover a range of perspectives. It was also noted that Abdulhadi was not a representative of Hamas.

¹¹ Of course, at the time of the Q+A Yaakoby broadcast, viewers could not have been aware that two weeks later there would be another long Q+A interview with a Palestinian official. It is not clear whether this may have added to the perception of the complainants that the Israeli perspective was being given undue prominence.

Although both Tame's cited figure of over 1300 and Yaakoby's figure of 1400 were inaccurate, the difference was not considered material to viewers' understanding of the situation and therefore the Accuracy Standard was not breached.

Examples of other reasons given by TVNZ for not upholding the Accuracy Standard complaints (which included the citation of numerous data sources) are summarised and paraphrased below:

- *The interview did not purport to provide a broad examination of all relevant contextual and historical considerations, nor could this be reasonably expected in a programme like Q+A.*
- *Claims made by the Ambassador of burning bodies, rape, necrophilia, and use of human shields were supported by credible media sources and the UN or NATO.*
- *Other statements by Yaakoby were comment, analysis or opinion, including the ratio of civilians to combatants killed, the famine situation in Gaza, and issues with aid trucks.*
- *Jack Tame challenged the Israeli ambassador's comments on several issues, including the potential genocide, the hijacking of aid trucks, the scale of civilian casualties and extent of famine in Gaza.*
- *Footage of destruction in Gaza that was played while discussing the October 7 attacks was a mistake, and was quickly corrected in line with the expectation of the Accuracy Standard.*
- *News consumers would be aware that statements made by politicians and government representatives may be politically motivated and from a particular perspective.*
- *The history of conflict in Israel and Palestine is well-known and has been covered in other TVNZ programmes and other media reporting. The subsequent interview with Dr Abdulhadi also contained extensive historical context.*

5.3 The Authority's Determination and Reviewer Assessment

The Authority did not uphold any of the complaints under the Accuracy Standard. Several statements made in the course of the two Q+A interviews had been challenged by reports cited by the complainants and the Authority acknowledged the concerns regarding the risk and harm of misleading the public regarding the conflict in Gaza.

The main risk of harm underpinning the complaints was identified as misleading the public in respect to their understanding of the 'contribution' Hamas and Israel had respectively made to the conflict in Gaza. I concur that this was the central concern and that confusion or misunderstanding on this issue could compromise the extent to which either side could be held to account.

The Authority considered the numerous points of complaint relating to this core issue with consideration of i) whether the standard could apply to material that was identified as comment, analysis or opinion, ii) whether the broadcaster had made a reasonable effort to ensure accuracy, and iii) whether any harm stemming from inaccurate or misleading comments was sufficient to outweigh the public interest in the content and the right to freedom of expression.

The Authority considered that all three mitigating factors were relevant to the case and that therefore the complaints could not be upheld under the Accuracy Standard. After reviewing the explanations and reasoning (see below), I consider the Authority's decisions to be generally correct and consistent with the Broadcasting Act and the Code of Broadcasting Standards.

In respect to the question of whether the complaints applied to parts of the broadcasts which were identified as analysis, comment or opinion, the Authority notes that this is not always self-evident and that the context and mode of presentation influences whether this is discernible by the viewer. Although many of the comments identified by the complainants as inaccurate are asserted definitively as statements of fact, there were several reasons cited as to why the Authority considered the Accuracy Standard to be inapplicable in respect of those points.

First, the fact that the interview format featured a single interviewee (in both cases) and that this was clearly different from a genre/format purporting to provide an in-depth analysis from multiple perspectives. Second, given that the first interview (the focus for the majority of the complaints) featured the Israeli ambassador, it would be apparent that he was commenting from the Israeli government's point of view. Third, the ambassador was not offering specific evidence to support his claims. Fourth, given that the Israel-Hamas conflict was ongoing, viewers could reasonably be assumed to be aware that the issues were complex, emotional and that verification of claims in a wartime situation would be challenging. As the Authority surmises, *'A reasonable viewer can therefore be expected to understand they are hearing*

a one-sided, partisan interpretation of the subject matter from the Israeli point of view' and a precedent case is cited¹² which supports the reasoning behind the decision.

I generally concur with the Authority's assessment and reasoning here. The argument that there was a high level of public interest in hearing perspectives from both an Israeli and a Palestinian side regarding the situation in Gaza is an important consideration, and the nature of the two Q+A interviews entailed opportunities for the interviewees to express their opinions forthrightly and offer analysis and comment reflecting their respective points of view.

Statements in both interviews were challenged by the complainant but the first with the Israeli ambassador was the primary focus for the accuracy complaints. Nevertheless, the interviewer did challenge- at times vigorously- the accuracy of numerous statements made by the ambassador. Although the interviewer needed to be well-informed about the Hamas-Israeli conflict and the Gaza situation to conduct the interview and guide the discussion, in the context of a live-recorded and unscripted recording format, they would obviously not be in a position to identify and fact-check every inaccurate comment made by an interviewee.

The nature of the interviews and the format of long-form interviews with free-flowing (and in some cases extended) dialogue was clearly intended to facilitate the expression of views from two sides involved in a conflict. This is a reasonable mitigating factor when considering whether more inaccuracies might have been challenged.

Although one might query the extent to which viewers would necessarily understand the challenges of verification in a wartime context, it seems implausible that viewers would fail to discern that the Israeli ambassador was speaking as an official representative of Israel. The Authority's point that the Accuracy Standard does not apply to content identified as opinion is therefore valid.

On the issue of whether the broadcaster made reasonable efforts to ensure accuracy, the Authority notes that it is not their role to independently ascertain accuracy but to assess the adequacy of the broadcaster's own processes and checks. It also highlights the difficulty of definitively verifying some claims in an unfolding conflict where the facts are disputed. The extensive footnotes appending the Authority's decision nevertheless suggests they went to considerable lengths to fact-check certain claims as far as was possible.

The Authority considered TVNZ's citation of reports from reputable sources which supported some of the statements disputed by the complainants, and was satisfied that the broadcaster would not have readily identified the claims as false. The reports cited also highlighted the difficulties of verifying information given the situation at the time.

The statements disputed included claims by the Israeli ambassador that Hamas was responsible for decapitations, gang rape and other atrocities in the October 7 attack, use of human shields, hijacking aid convoys, and that Palestinian children were taught to hate Israel. The Authority noted that the interviewer, Jack Tame, did not challenge all these assertions and in some cases appeared to validate the ambassador's assertions, including commenting that Hamas might use civilians for 'barbaric purposes' and acknowledging that if Hamas disarmed there would be peace.

The Authority contacted both TVNZ and the complainants for further clarification (again attesting to the rigour of their processes), with the latter rejecting the former's claim to have exercised sufficient efforts in ensuring accuracy. The Authority recognised the importance of broadcasts '*striking a balance between informing the public and being used as a vehicle for propaganda*' and acknowledged the complainants' provision of source material refuting the broadcast statements in question.

The Authority rightly observes that it 'might have been preferable for Tame to have challenged more of the Ambassador's comments', but also points to the numerous instances where the interviewer *did* challenge his assertions and considered that this would '*mitigate any incorrect impressions of [the Ambassador's] overall credibility.*' The Authority also notes that the audience would have discerned that the Israeli Ambassador was offering a perspective representing an official Israeli perspective and taken that into consideration in interpreting the comments. The Authority's overall view, given the nature of the interview, was that TVNZ had made a reasonable effort to ensure accuracy.

¹² BSA (2003) Anderson, the Auckland Jewish Council and Leverton, and television New Zealand Ltd. 2003-028, 2003-029, 2003-030. <https://www.bsa.govt.nz/decisions/all-decisions/anderson-the-auckland-jewish-council-and-leverton-and-television-new-zealand-ltd-2003-028-2003-029-2003-030/>

I concur with the Authority's reasoning here and with its decision not to uphold the complaints on the basis TVNZ made reasonable efforts to ensure the accuracy of the broadcast.

Although the accuracy of some statements could- and arguably should- have been challenged, the question is whether that was necessary to constitute reasonable efforts to ensure the audience was not materially misled, given the genre and format of the Q+A programme. As noted above, the interviewer firmly challenged a number of assertions made by the interviewee, but not on every point of inaccuracy flagged by the complainants. Even allowing for the application of the Accuracy Standard to be applied to assertions of fact or assumptions of fact upon which opinions are based, the scope of the discussion and the interviewer's challenges served to convey the overall disputability of the claims in the broadcast interviews.

Hearing those perspectives still allows the public to form their own opinions, and the genre/format would not be expected to provide a definitive account of the Hamas-Israel conflict and the Gaza situation such that either broadcast would form the sole basis for public opinion. It would also be apparent to most viewers that the Israeli Ambassador's perspective was not neutral or intended to be neutral.

In regard to the second Q+A interview with Dr. Abdulhadi, the complaints on accuracy focused primarily on the interviewer's suggestion that Hamas' official position was to support the destruction of Israel. The complainants argued that this overlooked the revised 2017 Charter of Hamas which had changed its position on the existence of Israel.

The Authority noted that a) the revised 2017 Charter did not explicitly acknowledge the Israeli state's right to exist and that b) the interviewee was able to directly challenge the interviewer's claim in the course of the interview. The Authority declined to uphold this complaint.

My agreement with the Authority's determinations and reasoning here should not be interpreted as dismissive of the wider moral, legal or human rights concerns expressed by the complainants about the disputed statements in the broadcasts. The Authority acknowledged concerns regarding the risk and harm of misleading the public regarding the conflict. Given the historical concerns about structural biases in media reports on the Israel-Palestine conflicts (supported by academic research¹³) the complaints were understandable. However, given the mitigating factors such as the format of the interviews and the positioning of the interviewees as representing specific viewpoints, the complaints would not be *seriously misleading* and did not demonstrate a breach of the Accuracy Standard as it pertains to the two Q+A programmes in question.

This was the longest and most detailed case under consideration and it invites some further reflections which will also inform the discussion of two other cases: Al-Jiab and Television New Zealand Ltd and Zaky and Radio New Zealand Ltd (both of which also concern the Gaza situation). Obviously, the Israel-Palestine tensions- and the Gaza situation in particular- are exceptionally sensitive and on-going political matters. These sensitivities arise not only from the events in October 2023, but from decades of protracted political disputation, fragile peace accords, and asymmetric conflict between the Israeli Defence Force and armed pro-Palestinian groups. Military actions by Hamas and the IDF have resulted in civilian casualties on both sides (although not in equal measure) and both sides have accused each other of human rights abuses, war crimes, and/or genocidal intentions.

The reviewer's role here is obviously not to adjudicate on the moral or legal status of any side's actions, but to consider the Authority's decisions in respect of the Accuracy Standard. However, as the preceding discussion underlined, part of the complexity of the complaints here concerns definitions of what *is* factually (in)accurate. Even if the Authority's function does not officially extend to definitive verification of disputed statements, inevitably it must make judgements based on some criterion of accuracy.

The use or non-use of particular terminology to define events, or the assumption of certain frames of reference over another can be contentious and ideologically polarised. For example, does military action resulting in civilian deaths require categorisation as a war crime or genocide, or can it be regarded as regrettable but necessary self-defence

¹³ For example, see Cherkaoui, T. (2025). Framing the Gaza Conflict: Media Bias, Violence, and the Battle of Narratives. The Political Economy of Communication, 11(1). <https://polecom.org/index.php/polecom/article/view/179> Also see Philo, G. & Berry, M. (2011) *More Bad News from Israel*. Pluto Press. <https://doi.org/10.2307/j.ctt183p5nr>

against an oppressive state or terrorist group? Or does explaining the IDF attacks in Gaza as a direct response to the Hamas-led attack on Israel necessarily understate the extent to which this was a response to the longer-term political situation in Gaza and the occupied territories?

The definitions and frames applied to the material facts in such cases often imply normative valences which complicate any unambiguous claim to a neutral position. Indeed, if the media tried to be strictly neutral in explaining the material facts without any value-judgement, this would likely be unsatisfactory for any side for whom a moral position regarding one side's terrorism or genocide is considered definitive and for whom deviation from that definition constitutes a denial of what is deemed self-evident fact. Although that is certainly not intended to excuse a lack of accuracy or balance in reporting, it does suggest that 'the facts' according to those committed to one side or the other might at times be incommensurable¹⁴ and reflect fundamentally different and irreconcilable world-views. It may also help explain why there appear to be strong reactions to perceived or actual inaccuracies in reporting.

6.0 Case 2: Al-Jiab and Television New Zealand Ltd - 2024-058¹⁵

This case is another concerning Hamas-Israel and the situation in Gaza. It stems from a complaint about a report on TVNZ's 1News on 1 June 2024 concerning an Israeli proposal to end the war in Gaza announced by US president Joe Biden. This included a statement that as part of the plan, 'Israel would withdraw from Gaza' when in fact the plan entailed a partial withdrawal. Given that 1News is a factual genre, the Accuracy Standard applies.

The complainant, Rami Al-Jiab argued that the broadcast breached the accuracy, balance, fairness, and discrimination and denigration standards of the Code of Broadcasting Standards in New Zealand.

6.1 The Complaints

In respect to the complaint that the broadcast breached the Accuracy Standard, the specific points were as follows:

- *The item inaccurately stated that, as part of the first phase of the plan, 'Israel would withdraw from Gaza.' In fact, it would only withdraw from densely populated areas in Gaza.*
- *This misled the audience to believe phase one involved Israel completely withdrawing from Gaza and may in turn lead them to presume Palestinians are being unreasonable if they reject the proposal.*
- *The inaccuracy merited a 'formal correction and apology...during the [1News] programme so that the target audience they misled with their inaccuracies are informed'.*
- *'The constant bias of these inaccuracies are always in favour of Israel, hence there's a balance and fairness issue.'*

Although TVNZ upheld the accuracy complaint and carried an accurate report on its website (see below), the complainant did not consider this adequate. The complainant also requested the complaint be viewed in combination with a previous Authority ruling on a complaint (from the same person) which had been upheld on the Accuracy Standard¹⁶, noting concerns about TVNZ's reporting being generally biased towards Israel.

¹⁴ By 'incommensurable' here, I am suggesting an absence of common epistemic ground for either side to validate/dispute what they claim as fact/falsehood from the perspective of the other, even if the material facts (body-count, destroyed buildings) are themselves not disputed. A comparable point was made by the Authority in an earlier case in BSA (2003) Anderson, the Auckland Jewish Council and Leverton, and Television New Zealand Ltd. 2003-028, 2003-029, 2003-030 (point 68).

<https://www.bsa.govt.nz/decisions/all-decisions/anderson-the-auckland-jewish-council-and-leverton-and-television-new-zealand-ltd-2003-028-2003-029-2003-030/>

¹⁵ BSA (2024b). Al-Jiab and Television New Zealand Ltd. <https://www.bsa.govt.nz/decisions/all-decisions/al-jiab-and-television-new-zealand-ltd-2024-058-4-december-2024/#searched-for-Israel>

¹⁶ BSA (2024g) Al-Jiab and Television New Zealand Ltd 2024-041. <https://www.bsa.govt.nz/decisions/all-decisions/al-jiab-and-television-new-zealand-limited-2024-41-7-august-2024/>

6.2 Television New Zealand's Response

TVNZ considered the complaint from Al-Jiab and upheld the complaint about accuracy in respect to the statement about Israel's withdrawal from Gaza. TVNZ offered an apology to the complainant and attributed the inaccurate statement to human error. However, they did not consider it necessary for 1News to issue a correction on-air on the grounds that the correct information on phase one of President Biden's ceasefire plan was widely reported in other broadcasts and media.

6.3 The Authority's Determination and Reviewer Assessment

Noting that TVNZ had acknowledged the error on the basis that there was a significant difference between a partial and a full withdrawal from Gaza, the Authority concurred with this assessment. However, the Accuracy Standard also obliges the broadcaster to correct inaccuracies within a 'reasonable period' after notification of a breach. Whether or not TVNZ's response was adequate is the main point of disputation, given that TVNZ apologised for the inaccuracy but declined to include an on-air correction.

The Authority pointed out that the broadcaster's correction of a material error of fact can take account of the nature and impact of the error, whether or not the topic is subject to ongoing updates in which the correct information would appear (thus mitigating any harm stemming from the audience being misled), and whether the error is identified, along with consideration of whether it remains a newsworthy point over time.

According to TVNZ, the error was not repeated in any subsequent broadcasts. However, the entire 1News programme containing the inaccurate statement did remain available on the online TVNZ+ Broadcast Video On-demand Platform. It advised the Authority that the system did not allow the editing of the recorded programme but placed a correct version of the story on its website the following day which accurately noted the proposal entailed the 'withdrawal of Israeli forces from all densely populated areas of Gaza.'

The Authority determined that TVNZ's subsequent website publication of the corrected story was sufficient to 'correct the error in a way that is reasonable in the circumstances'. As the Authority explained:

- *The broadcast was a brief early report on the proposed deal. If progressed, the peace plan could reasonably be expected to have been the subject of significant further reporting, offering additional opportunities to correct viewers' understanding of its features.*
- *The broadcast did not purport to be a detailed analysis of the proposed deal and viewers are likely to understand there may be more to it than could be conveyed in an item of just over one minute's length.*
- *While we agree reporting on such matters is important in shaping viewers' understanding of the conflict, we consider this individual inaccuracy is unlikely to generate the type of serious indirect consequences the complainant identifies.*
- *The proposed deal was more accurately described in multiple other media, limiting the likelihood of viewers being misled.*

On that basis the Authority did not uphold the complaint under the Accuracy Standard corrections requirement.

There was also consideration of whether other remedial actions might have been appropriate, given the severity of the conduct, extent of actual or potential harm, and whether the broadcaster's remedial action was appropriate. Considering the fact that TVNZ had upheld the Accuracy Standard breach in the first instance and that the error was not repeated, the Authority considered that no further action was required to address any potential harm beyond the action already taken to provide a correct version of the report online.

I concur with the Authority's reasoning and conclusion that the Accuracy Standard was not breached. In line with the specifications of the Broadcasting Act, the Broadcasting Standards Codebook and specifically the Accuracy Standard, the Authority's view that TVNZ met its obligations in issuing the correction is valid.

The Authority's point that TVNZ's initial acknowledgement of the inaccuracy and publication (online) of a correct version of the Israeli partial withdrawal served to mitigate potential harm attributable to any inaccuracy is likewise justified.

As the Authority also rightly noted, the fact that the initial report containing the inaccurate explanation of the withdrawal was not the only report on the on-going conflict in Gaza in that time-frame provides grounds to infer that any misled viewer interested in the issues would be likely to have had any misunderstanding corrected by the ongoing coverage both on TVNZ and other news media. Such considerations are consistent with the Authority's reasoning in cases such as *Grinwis and Radio New Zealand Ltd* 2024-090¹⁷.

This does raise a point of reflection, however. Insofar as the Accuracy Standard allows for other concurrent (or subsequent) media coverage providing an accurate account of a topic to mitigate against the need to broadcast a correction, this does raise a question of *which* channels/platforms are considered pertinent in such contexts. TVNZ apparently included a correction for its 1News bulletin, broadcast on TV One, on its website (although the original, uncorrected report remained available on the TVNZ+ on-demand platform for a week). A further complexity to consider here is that if a programme containing inaccuracies is made available online, and editing is technically impossible¹⁸, there may have to be a choice between complete deletion or continued availability.

The risk of harm to the public from retaining the public availability of an inaccurate statement would presumably be weighed against the harm of removing the entire broadcast, which might deny the public access to other, accurate news content. However, if the broadcaster is permitted to argue that any harm is mitigated by the availability of other correct versions of the topic in question on other media, then why could not the same argument be used in respect of the programme as a whole? After all, if the other third party news reports do indeed play a compensatory role, then one might argue that deleting the entire programme would eliminate any risk of harm from the inaccurate content. The objection to this might be that deletion harms the broadcaster more than the public- but then the Broadcasting Act is there to protect the interests of the latter, not the former.

In its current form, the Broadcasting Act does not apply to online content. Although the Standards are currently assumed to extend to online content which has also been broadcast, the Act is not specific about the obligations of broadcasters vis-à-vis the use of online platforms to correct/claim mitigation for inaccurate or misleading broadcast content.

7.0 Case 3: Zaky and Radio New Zealand Ltd - 2024-004¹⁹

This case arose from a broadcast on RNZ's Morning Report programme featuring an interview with Benjy Treister, who was serving with the Israeli Defence Force, on 27 November 2023. Treister is an New Zealand Israeli called up to serve in the IDF in Gaza, and was interviewed for roughly 6.5 minutes about the situation in Gaza. Morning Report is obviously factual in nature and falls into the news and current affairs genre, and therefore the Accuracy Standard is applicable.

The interview covered the potential success of the (then) ceasefire in securing the release of the Israeli hostages held by Hamas, the growing civilian death-toll stemming from the Israeli military actions in Gaza, the issue of whether Hamas was using human shields, and the measures taken by the IDF to minimise civilian casualties.

Muhammad Zaky complained, claiming that the interview breached the Accuracy Standard as well as the standards pertaining to discrimination and denigration, offensive and disturbing content, and balance standards.

¹⁷ BSA (2024f). *Grinwis and Radio New Zealand Ltd*. <https://www.bsa.govt.nz/decisions/all-decisions/grinwis-and-radio-new-zealand-ltd-2024-090-12-march-2024/#searched-for-Grinwis>

¹⁸ Whether or not editing an online programme is technically *impossible* may be a moot point. One might argue that the broadcaster's responsibility to correct inaccuracies entails the responsibility to distribute its content on a platform/system that *permits* correction. Admittedly, a live newscast cannot be re-recorded, but the addition of a subtitle indicating a correction has been made (or even including the correction if it concerns a specific point) would in theory be possible. Licensing agreements regarding the use of wire service or other third party footage in the broadcast might complicate modification of course.

¹⁹ BSA (2024c). *Zaky and Radio New Zealand Ltd* <https://www.bsa.govt.nz/decisions/all-decisions/zaky-and-radio-new-zealand-ltd-2024-004-20-march-2024/#searched-for-Israeli>

7.1 The Complaints:

The following points in the interview were identified by the complainant in respect of breaches of the Accuracy Standard, with the suggestion there was either no evidence to support the claim or evidence of contrary actions/events:

- *The statement that Hamas is using the civilians of Gaza as a human shield.*
- *The statement that Israel had previously attempted to give Palestinians their own country in 2005 as part of the two-state solution.*
- *The claim that Hamas was using hospitals in Gaza as cover for their operations.*
- *The statement that Israel had built hospitals in Gaza. and that Hamas was using them as a shield, including the use of hospitals to hold Israeli hostages.*
- *The claim that Israeli forces fired smaller missiles onto the roof of civilian-occupied buildings in Gaza as advance warning of an attack.*
- *The reporter failed to adequately challenge the interviewee on the veracity of his claims.*

7.2. RNZ's Response:

RNZ did not uphold any of the complaints in respect to breaches of the Broadcasting Standards. On the Accuracy Standard, RNZ pointed out that the Israeli government has long maintained that Hamas has utilised a network of underground tunnels throughout Gaza to enable Hamas operatives to come and go amid civilian life and buildings. RNZ noted that even if the evidence for this was 'difficult to source', it was 'not misleading to report that some Israelis believe this and that it is central to the IDF's strategy and tactics.'

From the information included in the Authority's decision, RNZ appears to have provided no additional clarification or rebuttal of the other points raised by the complainant under the Accuracy Standard.

7.3 The Authority's Determination and Reviewer Assessment

The Authority did not uphold the complaints under the Accuracy Standard. It identified that the harm that the complainant is concerned about under the Accuracy Standard is the risk that the public could be misled by the various interviewee statements disputed by the claimant.

The Authority lists the key statements being disputed (see above) but applies the principle (Codebook 6.1) that '*the requirement for factual accuracy does not apply to statements which are clearly distinguishable as analysis, comment or opinion, rather than statements of fact. An opinion is someone's view; it is contestable, and others may hold a different view*'.

The Authority also cites a previous case²⁰ where a complaint about the accuracy of statements made in the context of an interview was not upheld on the grounds that the interviewee was providing opinion and analysis from a particular standpoint and that, insofar as there was inaccuracy, it was not materially misleading.

I concur that under the provisions of the Broadcasting Act and the Broadcasting Standards Codebook pertaining to the Accuracy Standard, the Authority's decision not to uphold the complaint is correct and based on a thorough analysis of the case and consideration of precedent cases. I also agree that the complaints pertaining to accuracy have been considered under the appropriate standard.

Nevertheless, in my view, there is scope for further reflection on how the Accuracy Standard applies in respect of i) differentiating factual assertions from opinion and ii) the adequacy of the broadcaster's efforts if assertions ostensibly made as opinion are nevertheless '*materially misleading with respect to any facts: referred to; or upon which the analysis, comment or opinion is based*' (see Section 6.1). If this guideline is interpreted to cover both facts directly referred to and facts implicitly assumed (underlying), that would suggest that the Accuracy Standard extends to

²⁰ BSA (2022b) Buchanan and Discovery NZ Ltd 2022-087. <https://www.bsa.govt.nz/decisions/all-decisions/buchanan-and-discovery-nz-ltd-2022-087-26-october-2022/> This concerned statements by Greenpeace Executive Director, Dr. Russell Norman, concerning emissions reduction policy.

statements which assert or presuppose facts in the context of expressing an opinion²¹. I emphasise that I am making these observations as feedback to inform the Authority's reflections on their processes, not to disagree with the Authority's overall determination.

The Authority noted that the interviewee statements being challenged under the Accuracy Standard are expressed definitively and noted the absence of any qualifying '*I think*' or '*in my opinion*' qualifications. However, it concluded that listeners would most likely identify the interviewee's statements as analysis, comment or opinion, and sets out the following reasons supporting that interpretation:

- *The programme was an interview with a single soldier, rather than an in-depth investigatory piece featuring multiple interviewees or experts to establish facts.*
- *The interviewee was introduced as a Kiwi-Israeli soldier in the Israeli Defence Force. While a soldier might have first-hand knowledge of some of the matters mentioned (for example the use of small 'warning' missiles), the soldier does not purport to speak from personal experience, or about what he has himself witnessed (and we note two of the relevant matters were historical events).*
- *No evidence was provided for the interviewee's claims. In one case he simply references videos 'that are published online constantly'.*
- *The subject matter was the ongoing Israel-Hamas conflict. Listeners can be expected to understand the complexity and emotionally charged nature of this conflict as well as the challenges of obtaining accurate information in wartime situations.*

On these grounds, the Authority suggests a 'reasonable listener' would understand they are hearing a partisan perspective from an Israeli soldier, citing an earlier complaint²² (also not upheld) where a Palestinian perspective in a documentary was challenged under the Accuracy Standard and where the Authority considered that inaccuracies may be difficult to verify and subject to interpretation.

I accept most of the Authority's reasoning here but not without qualification. The overall assessment of the opinion v fact issue can be justified, insofar as most listeners would infer from the nature of Treister's assertions that his statements reflect a position aligned to the IDF. But arguably, this particular factor could have been considered differently. As my subsequent comments will explain, even if a reasonable listener might be expected to discern that the interview stemmed from a partisan, pro-Israeli viewpoint (and therefore constituted analysis, comment or opinion), there was a lack of clarity regarding the capacity in which the interviewee was commenting. I would suggest this may have some bearing on the extent to which the assertions might be perceived as credible/authoritative by listeners.

The claim that a reasonable listener might be expected to understand they are hearing a one-sided, partisan interpretation of the subject matter from an Israeli soldier's point of view still requires an inference from Treister's statements throughout the interview.

There is a question here over whether the Morning Report interviewee, Benjy Treister, was self-evidently commenting in the capacity of an Israeli soldier and that his statement would necessarily be understood by listeners as his own personal opinion. Ambiguity in the interviewee's status as commentator and their perceived qualification to speak definitively on a topic may influence the way the listener might perceive the credibility of any assertions. This is potentially materially significant if there is a risk the audience could be misled in respect to his credibility as a witness to the Gaza conflict and the general accuracy of his claims.

The Authority recognised that his statements are 'expressed definitively' but considered Treister's status to be identifiable as an individual soldier speaking personally, and notes he does not '*purport to speak from personal experience, or about what he has himself witnessed*', implying the format was not intended to be an investigative piece exploring multiple angles to establish facts. These considerations underpin the Authority's view that his comments are opinion and that the Accuracy Standard therefore does not apply. I would agree that the audience would likely infer that

²¹ So for instance, an assertion that a military action is self-defence assumes as its logical premise that there has been some sort of prior act of aggression or threat to which the military action is a response.

²² BSA (2003) Anderson, the Auckland Jewish Council and Leverton, and Television New Zealand Ltd. 2003-028, 2003-029, 2003-030. <https://www.bsa.govt.nz/decisions/all-decisions/anderson-the-auckland-jewish-council-and-leverton-and-television-new-zealand-ltd-2003-028-2003-029-2003-030/>

the statements were opinion from an Israeli/IDF perspective. However, it is not self-evident that he is *not* offering first-hand testimony, particularly in extending personal assurances regarding the IDF's ethical conduct in warning Gazans about imminent attacks.

Morning Report introduced Treister thus: *'Benjy Treister is a Kiwi-Israeli soldier who was called on to serve in the conflict in Gaza. He is with us now on the line'* indicating that the interview was live. Apart from noting that he is serving with the Israeli military, there is no indication of his rank, unit or role. An earlier RNZ report shortly after the October 2023 attack led by Hamas, also interviewed Treister prior to his call-up. This identifies him as a 'New Zealander whose young family lives in the city of Be'er Sheva, about 20 kilometres from Gaza' and whose two brothers had been called up for military service. Treister was reported to be anxious about his family's safety, given its proximity to the fighting, and also about the likelihood that he too would be called up- an eventuality which subsequently transpired.

Some listeners may well have been aware of this previous report but Treister was not a regular commentator who would be readily recognised by listeners. Even with the background information, the listener still cannot be certain whether he is speaking from personal experience or on behalf of the IDF. But the Morning Report interview provided no information about Treister's status or positioning other than the fact that he was a Kiwi Israeli serving in the conflict in Gaza. In fact, Treister self-identifies that he was 'speaking as a Kiwi'. This positioning suggests the comments are first-hand (on the ground in Gaza) and unofficial (as a Kiwi not an Israeli soldier).

So even allowing that Treister's views are identifiable as opinion sympathetic to the IDF, whether he is reporting what he had personally witnessed as a front-line combatant, what his commanding officer has told him (or indeed, told him to say) or what he had heard from third parties or read on social media is not apparent (there is one reference to videos showing Hamas using hospitals). The capacity in which Treister speaking is arguably materially significant if it is liable to affect the degree of credibility his statements carry. His unequivocal assertions and assurances about ethical IDF behaviour and military tactics in Gaza may imply an official position and arguably the certitude of an eye-witness.

As the complainant alleged, some of the interviewee's assertions of fact about the conflict in Gaza might be disputed. Consider the 'roof-knocking' claim by Treister:

'Before attacking a building that has many civilians in it, oftentimes we fire a small, you know, small missile that hits the roof. And that way everyone in the building gets scared and leaves the building, and that way we can shell the building with something bigger. [...] we requested all the civilians living in the north part of Gaza to leave, and we did this for about, we gave them about a week's notice. We phone called them, we sent them letters. We did all that is possible to get them to leave. [...] I can promise you the IDF is doing all that it can in order to minimise the numbers of civilian casualties in this conflict.'

As the Authority notes, there were reports that Israeli intelligence did indeed provide Gazans with advance warnings and employed so-called 'roof-knocking' whereby small explosives are dropped on buildings to confirm a heavier attack was imminent²³. But the extent to which this was standard operating procedure is unclear. Given the numerous reports of IDF attacks destroying inhabited buildings in civilian areas of Gaza without warning²⁴, this seems unlikely. The picture of the IDF's military ethics painted by Treister may have been opinion but insofar as it frames Israel as a reluctant actor engaged in necessary and proportionate self-defence, this is a material point of factual disputation and potentially misleading.

Even allowing that the interviewee's statements were implicitly positioned as opinion, they are asserted as fact with the implication that, as a soldier ostensibly on the ground in Gaza, Treister is in a position to know such things. The fact that the interviewer on Morning Report does not seek clarification as to how Treister can be so sure of his claims arguably invites the listener to infer that these assertions are authoritative and correct²⁵.

²³ Cuddy, A. (2023) 'I'm calling from Israeli intelligence. We have the order to bomb. You have two hours'. BBC News, 8 November. <https://www.bbc.com/news/world-middle-east-67327079>

²⁴ Abraham, Y. (2025) Bomb the area, gas the tunnels: Israel's unbridled war on Gaza's underground. +972 Magazine, February 6th <https://www.972mag.com/tunnels-hamas-lethal-gas-bombs-gaza/>

²⁵ Had the Morning Report interviewer simply asked a question like, 'have you witnessed these events/actions first hand?' this would probably have been sufficient to ascertain the interviewee's positioning and validity of the claims.

Taking account of the ambiguity over Treister's position and the possibility that some assertions were based on misleading statements of fact, this raises the question of whether the broadcaster made a reasonable effort to mitigate such concerns. As the Codebook clearly states (Commentary to Accuracy Standard, p16), *'reasonable efforts must always be taken to avoid misleading the public with respect to matters of fact. This applies whether facts are stated directly or form the basis of an opinion.'*

The Authority recognised that the broadcaster has a role in informing the public while avoiding being used as a 'platform for propaganda'. However, the Authority commented that, *'even if some of the soldier's statements were unverifiable or ultimately prove incorrect, we are satisfied RNZ exercised reasonable efforts and struck the appropriate balance'*, [paras 15-16] explaining that:

- *In our view, there was no reason to suspect the soldier's comments to be anything other than the soldier's genuinely held perspectives and beliefs.*
- *Many of the statements were consistent with other reporting and would not be readily identified as false.*

Given the preceding discussion, I would suggest there was more ambiguity regarding the status of Treister's comments than the Authority acknowledged. Furthermore, some of the Authority's cited examples of reports ostensibly demonstrating that the interviewee's assertions were *'consistent with other reporting'* (and thus reasonable for the broadcaster not to query their accuracy) actually call into question the overall accuracy of the interviewee's assertions²⁶.

The interviewee is asked to reconcile the civilian death toll in Gaza with the IDF's efforts to destroy Hamas and at one point the interviewer suggests more restraint might be merited. But at the same time, the interviewer also suggests New Zealanders *'absolutely can understand the desire to get rid of Hamas'* and says, *'I can understand the arguments about human shields and I think New Zealanders can appreciate that argument'* which appear to validate some of the points the complainant is disputing.

Compared with the Q+A interviews in Case 1, the interviewer on Morning Report made fewer attempts to challenge the assertions made by Treister on the disputed points. Coupled with the ambiguity over the status of his assertions, this arguably invited an interpretation that his comments were liable to be interpreted by the audience as factual/authoritative and consequently not constitute 'opinion' for the purposes of the accuracy standard'. In Case 1, the repeated challenges by the interviewer, questioning the interviewee's claims, was considered in the Authority's deliberations precisely *because* these signalled that their accuracy (and the overall status of the Ambassador's claims) could be disputed.

My impression is that, in this instance, the need for the broadcaster to make reasonable efforts to ensure accuracy was given a lower weighting in the Authority's decision, based on its view that Treister's statements were opinion. As such, the complainant's specific point that *'The reporter failed to adequately challenge the interviewee on the veracity of his claims'* appears to have been addressed only as part of the overall set of accuracy complaints, presumably on the basis the interview was considered to constitute opinion and consequently the Accuracy Standard did not apply.

In the previous case of Pack-Baldry et al. and TVNZ, the Authority's decision on the complaints about the Q+A interview with the Israeli Ambassador included consideration of assertions of fact and found that some of the dubious statements that were not disputed by the interviewer were nevertheless mitigated by the interviewer's overall pattern of challenge. In that interview, there could be no doubt whatsoever that the audience was hearing opinion from an official Israeli government point of view.

But comparing that with the Zaky and Radio New Zealand case, if it was apparent that the interviewee was expressing opinions from an IDF perspective and making assertions which could be materially misleading, then arguably the broadcaster's efforts to ensure accuracy and establish the status of the interviewee's claims merited consideration in a similar manner to the Q+A interview with the Israeli Ambassador. Was there perhaps more potential for this combination of factors to mislead than the Authority allowed for in its determination?

²⁶ For example, the suggestion that the IDF 'roof knocking' tactic warned Gazan residents of impending attacks on buildings is noted in a Guardian report cited in footnote #17 but the same story also notes reports that this was *not* occurring in numerous other cases across Gaza where civilians in residential areas were bombed without warning.

As a final point, the Authority comments on the importance of freedom of expression and considers that, there is a *'high public interest in an interview which questioned the Israeli military's justification for the humanitarian cost of its military strategy. The interview offered an Israeli perspective on events and there is significant benefit in the public understanding the perspectives of both sides in a conflict'*. Here, I concur with the Authority that there was a public interest in hearing voices from all sides of the conflict, and this is consistent with its position on the interview with the Israeli Ambassador in the Pack-Baldry and TVNZ case. Insofar as the interview includes statements whose accuracy has been challenged, this is a significant mitigating factor which suggests the benefits of allowing the public to hear a range of perspectives outweighs any harms.

8.0 Case 4: McGlone and Television New Zealand Ltd - 2024-074²⁷

This complaint concerns an item in a TVNZ 1News broadcast on 24 August which discussed the sailing hazards of crossing sand bars near harbour entrances, and highlighted an initiative by the coastguard to offer seminars about the safety issues.

The news segment included comments from a member of the Coastguard who advised that *'We recommend crossing the bar at high or low tide, so we can try and take the current out of the equation'*.

The complainant challenged this statement under the Accuracy Standard, arguing that the advice about crossing sand bars at low tide was incorrect. Given that the programme genre was obviously news and intended to be factual, the Accuracy Standard would generally apply.

8.1 The complaint

Jim McGlone made the complaint under the Accuracy Standard, arguing that the Coastguard's recommendation to cross harbour sandbars at low tide was incorrect and that the Coastguard was not an authoritative source.

Specifically, McGlone argued that:

- *Low tide is 'definitely not a good time' to cross a bar given the water is shallower, 'which is the key problem in navigating bar crossings'. The Coastguard representative's comment was 'wrong' and 'dangerous' and should therefore be retracted and publicly corrected.*
- *The safest time to cross a sand bar is 'one hour before high tide when the current is moving in the same direction as incoming waves and the water is near its maximum depth'.*
- *The Coastguard are 'a bunch of enthusiastic amateurs and must not be held up as experts in maritime matters'. Maritime NZ are a 'more authoritative organisation regarding safety at sea'.*

8.2 TVNZ's response

TVNZ declined to uphold the complaint under the Accuracy Standard, citing the following reasons:

- *Coastguard were a reasonable organisation for 1News to rely on. Coastguard is an expert body that provides training for boaties in crossing sand bars. They are also Aotearoa New Zealand's primary maritime search and rescue organisation, working closely with the Police and Rescue Co-ordination Centre.*
- *'Maritime New Zealand says "the best time to cross a bar is at high water. Avoid crossing when the tide is going out. Wait until the conditions are suitable before you cross. Alternatively, choose a less dangerous place if possible."*
- *The Fishing Website has also said, quoting Coastguard, to time bar crossings with a 'slack tide' (the height of a low or high tide).*
- *'The Committee understands that the best tide conditions for a bar crossing can be different depending on the harbour bar being crossed.'*
- *Although the complainant disagreed with Coastguard's 'brief advice' in the segment, the advice 'was not provided as a definitive or fulsome explanation of the best way to cross a bar'. At the end of the segment, Coastguard's Bar*

²⁷ BSA (2024d). McGlone and Television New Zealand Ltd - <https://www.bsa.govt.nz/decisions/all-decisions/mcglone-and-television-new-zealand-ltd-2024-074-4-december-2024/#searched-for-McGlone>

Awareness seminars were promoted 'so that viewers who were interested could further their knowledge on this issue'.

8.3 The Authority's Determination and Reviewer Assessment

The Authority did not uphold the complaint under the Accuracy Standard.

The Authority noted that even in the context of a factual genre like news, the Accuracy Standard as set out in the Codebook does not apply to statements which are '*clearly distinguishable as analysis, comment or opinion*'. First of all, it therefore considered whether the Coastguard statement, '*We recommend crossing only the bar at high or low tide, so we can try and take the current out of the equation*' constituted comment, analysis or opinion. It determined that the Accuracy Standard *did* apply on the basis that viewers would likely interpret the Coastguard recommendation as a factual statement. The Authority noted that it arose in the context of a news programme, dealing with a factual issue, while the Coastguard was a 'reputable organisation for water safety information'.

I concur with this assessment. The manner in which the Coastguard was introduced included their comment on examples of hazardous harbour sand-bar crossings and was framed as providing an authoritative assessment if not specific advice. In that regard, the interviewee comment about the best time to cross sand bars was likely to be perceived as factual and afforded credibility in the eyes of the viewer.

The Authority then considered whether the statement about crossing sand-bars at low tide was materially misleading. In doing so, it reviewed sailing advice not only from the Coastguard but from organisations such as Maritime NZ, Safer Boating NZ and the Bay of Plenty Regional Council. It concluded that the statement from the Coastguard representative in the 1News item was not consistent with other Coastguard guidelines on sand bars, including the specific advice to 'never cross a bar at low tide'.

Other sailing advice, however appeared to be more ambiguous. As the Authority surmised, '*It appears there is no one-size-fits-all rule for crossing a bar. Coastguard, Maritime NZ, and other organisations agree the safest conditions for a bar crossing, including the best tidal conditions, are contingent on the bar in question and advise local knowledge is sought before crossing a bar.*'

Pointing out that it was not the Authority's function to rule on the accuracy of the statement, it noted (on the basis of multiple sources cited) that the statement was not materially misleading or inaccurate given that the overall point of the news item was to highlight the dangers of crossing sand bars. The Authority also noted that the programme in which the disputed comment about crossing at low tide appeared was not specifically educative in focus and cannot be viewed in isolation; the news item also identified other factors affecting safety when sailing past a sand bar, including tide, wind, current etc.

I concur with the Authority's reasoning here. The fact that a range of factors were mentioned, that the news item was not intended to be instructive, and that the overall intent of the piece was to advise viewers to be aware of the risks if sailing past sand bars, all suggest the specific comment from the Coastguard representative was not the main or primary message.

The Authority also considered whether or not the broadcaster had made sufficient effort to ensure the accuracy of the news item. Although the complainant questioned the expertise of the Coastguard on matter of maritime safety, it was noted that the organisation is reputable, functions as the main maritime search and rescue organisation in New Zealand, and works closely with other search and rescue services. As such, the Authority considered that TVNZ was entitled to rely on the specific Coastguard representative, noting that he is their Bar Safety Programme Lead and previously acted as Coastguard media commentor on sand bar safety. There are other precedent cases such as Hapeta and Television New Zealand Limited 2020-172²⁸ which arguably support the reasoning here.

²⁸ BSA (2021). Hapeta and Television New Zealand Ltd- <https://www.bsa.govt.nz/decisions/all-decisions/hapeta-and/#searched-for-song>

The Authority therefore declined to uphold the complaint under the Accuracy Standard. I concur with the Authority's determination and consider its deliberations to be consistent with the Broadcasting Act and the Code of Broadcasting Code Standards pertaining to the Accuracy Standard. I would also observe that the Authority took care to check the advice on navigating sand bars from other maritime safety sources in considering the case. The decision also appears to be consistent with previous comparable decisions.

There is a valid argument that the interviewed Coastguard representative's remark about crossing bars at high tide or low tide was still misleading insofar as this appears to be inconsistent with the advice on the Coastguard website. However, whether or not this was a *material* inaccuracy requires consideration of the fact that the intention of the news item was obviously to provide the viewer with general information about risky sailing activities, not to provide specific safety instructions.

The advice from other sources offering advice on sandbar crossings also indicated that there was no single definitive best practice for all sailing environments. It is also apparent that given the Coastguard's official status and the apparent expertise of the spokesperson whose comments were challenged by the complainant, that TVNZ acted reasonably in using them as an authoritative source. These considerations all support the Authority's reasoning.

9.0 Wilson and NZME Radio Ltd - 2023-085²⁹

This complaint concerned Newstalk ZB's Kate Hawkesby Early Edition broadcast on 19 July 2023. The programme included both news segments and presenter commentary, specifically discussing Te Whatu Ora/Health New Zealand's introduction of an 'Equity Adjustor Score' in prioritising non-urgent health care according to several criteria, including ethnicity. The presenter made several statements indicating that the policy prioritised health care for Māori and Pasifika patients over other ethnic groups and would move them to the top of surgical waitlists.

Listeners were invited to text through their comments reacting to the policy, some of which Hawkesby read out. All of these were critical of the policy, with several remarking that it was racist. As the Kate Hawkesby Early Edition transitioned into the Mike Hosking Breakfast, Hosking also made statements that the Equity Adjustor Score policy was racist.

In fact, as Te Whatu Ora explained, "*Patients are first prioritised according to their clinical need and placed into a clinical category. The equity tool is then used to help determine the order in which patients are booked for surgery within each clinical category. Factors taken into consideration include the length of time someone has been waiting, Māori or Pacific ethnicity, patients from low socio-economic areas and those living in rural areas.*"³⁰

A complaint about the broadcast was made by Chris Wilson in respect to both the Accuracy and Discrimination and Denigration standards, claiming that Hawkesby's statements that the Equity Adjustor Score would place Māori and Pasifika patients at the top of surgical waitlists breached both these standards.

As a broadcast including news and discussion of topical issues, the Accuracy Standard would generally apply to the Kate Hawkesby Early Edition.

9.1 The complaints

The complainant alleged that the Accuracy Standard was breached in the following respects:

- *The comments were inaccurate and 'materially misled the audience into thinking that Māori and Pasifika patients would be lined up first on the surgery waiting list.'*

²⁹ BSA (2024e). Wilson and NZME Radio Ltd <https://www.bsa.govt.nz/decisions/all-decisions/wilson-and-nzme-radio-ltd-2023-085-8-april-2024/#searched-for->

³⁰ Te Whatu Ora/Health New Zealand (2023) Health Equity and Equity Adjustor Tool- OIA HNZ00022694 Response- <https://www.tewhatauora.govt.nz/assets/Publications/OIA-response/Equity-OIA/OIA-HNZ00022694-Response.pdf>

- *'Kate Hawkesby said this as an unqualified statement of fact not analysis. The email from [Te Whatu Ora Business Support Manager] did inform about the new criteria but did not say that Te Whatu Ora would be lining up Māori and Pasifika patients first for surgery.'*
- *'This story is about the Equity [Adjustor] Score which does not move patients to the top of the waiting list based on ethnicity. Ethnicity is one of five criteria used to make these decisions.'*

The claim that the presenter's comments were misleading also underpinned the other part of the complaint regarding a breach of the Discrimination and Denigration Standard. This is outside the scope of the current report but is mentioned because the Authority's determination of the complaint under the Accuracy Standard regarding whether the broadcast was materially misleading had a bearing on whether or not it also breached the Discrimination and Denigration Standard.

9.2 The response from NZME

NZME declined to uphold the complaints under either the Accuracy or Discrimination and Denigration Standards. The following reasons were provided:

- *The views expressed by the host during the programme relating to Te Whatu Ora's Equity Adjustor Score were her own analysis, which is not subject to the accuracy standard.*
- *'Specifically the host's statement, "Māori and Pacific Islanders waiting for surgery, they're being moved to the top of the very lengthy hospital waiting lists", is her analysis of what was an emerging news story rather than a statement of fact and therefore this standard does not apply to it.'*
- *'It is worth noting that later the same day, the Herald published an article explaining in more detail how the Equity Adjustor Score works and noting that Māori and Pasifika are top of the list in the ethnicity category.'*
- *'Importantly, ...the host specifically referred to the other factors included in this scoring system and this was reiterated during the 5.30am news bulletin. In addition, the programme included commentary from a respected academic, the Health Minister and GPNZ Chair explaining why the inclusion of ethnicity as a factor in this scoring system was needed given the longstanding health inequities faced by Māori and Pasifika communities.'*

9.3 The Authority's Determination and Reviewer Assessment

The Authority upheld both the complaints under the Accuracy Standard and the Discrimination and Denigration Standard. The initial consideration was the balance between freedom of expression and the potential for harm, which in respect to the Accuracy Standard concerned the potential for material inaccuracies to mislead.

The Authority acknowledged the broadcaster's right to impart information and the public's right to receive it, and noted that there was a public interest in scrutiny of government policies. It was also noted that the hosts of some radio programmes, including Kate Hawkesby, were known for their provocative opinions. Insofar as this might generate discussion, there is arguably a public interest in allowing free and frank expression but, as the Authority underlines, 'so long as standards are maintained'.

In upholding the complaints, the Authority explained that, *'considering the potential harm caused by the broadcast, we were not satisfied the approach taken by Hawkesby was justified in the public interest or that it added value to the discourse surrounding the implementation of the Equity Adjustor Score in Auckland. In our view, many of Hawkesby's comments were significantly misleading as to the nature and impact of the Score, and we consider this misleading impression served to promote negative stereotypes about, and encourage hostility towards, Māori and Pacific Peoples.'*

Furthermore, the Authority concluded that, *'Recognising that Hawkesby is in a privileged and influential position as a well-known national broadcaster, we are satisfied that upholding the accuracy complaint in this case does not unreasonably limit the broadcaster's free speech. Rather, it reasonably requires Hawkesby to express her views in a way that does not propagate misleading information that may affect listeners' understanding of issues discussed.'*

I concur with the Authority's determination and consider its application of the Broadcasting Act, and the Broadcasting Standards Codebook pertaining to the Accuracy Standard to be correct. It is also important to note that the Authority's decision to uphold the complaint recognises that the right to freedom of expression (covered by the Bill of Rights, not the Broadcasting Act) is not *absolute* in the context of broadcast content found to be significantly misleading.

The Authority further explained its decision to uphold the complaint under the Accuracy Standard:

Firstly, in regard to the initial step of determining whether the broadcast was inaccurate or misleading the Authority affirmed the complainant's view that several statements made by Hawkesby throughout the programme were materially misleading. Numerous examples of assertions to the effect that the Equity Adjustor Score system meant that Māori and Pasifika patients were being moved to the top of surgical waiting lists are identified (abbreviated):

- *Māori and Pacific Islanders waiting for surgery, they're being moved to the top of the very lengthy hospital waiting lists;*
- *it's going to rank patients, putting Māori and Pasifika at the top of the list. European New Zealanders and other ethnicities like Indian, Chinese, et cetera, being left to wait;*
- *This is a new criteria that you'll be, you know, lining up your patients accordingly." So, basically telling them, "Māori and Pacific patients first, okay, ngā mihi!*
- *'New prioritisation of surgeries. Māori and Pacific patients to go first, this is due to the Equity Adjustor Score;*
- *Te Whatu Ora now wants surgeons to push Māori and Pasifika to the top of waiting lists based on ethnicity, basically, not on urgency or illness but ethnicity;*
- *It basically dictates that doctors must give priority to surgeries to Māori and Pasifika patients over and above everybody else;*
- *Māori and Pacific patients are being moved to the top of surgery waitlists.*

The Authority acknowledged that the Accuracy Standard does not generally apply if broadcast statements are identified as analysis, comment, or opinion. However, the guidelines (6.1) also make it clear that broadcasters must still make 'reasonable efforts' to ensure such content is not *'materially misleading with respect to facts referred to, or upon which the analysis, comment or opinion is based'*.

Although the Authority recognised that Kate Hawkesby Early Edition would be expected to contain strong opinions, it considered that the presenter's comments were 'unqualified statements of fact' and 'definitive' without any 'hedged' language to indicate that the statements should be taken as the presenter's personal commentary or analysis.

The Authority noted that Te Whatu Ora had stated that, *'Patients are first prioritised according to their clinical need and placed into a clinical category. The equity tool is then used to help determine the order in which patients are booked for surgery within each clinical category'* and also confirmed the interpretation with other sources such as the Māori Health Advisory Group of the Royal Australasian College of Surgeons which had clarified that, *'despite the tool [Equity Adjustor Score], clinical priority would always take precedence, and patients with potentially life-threatening conditions would not be pushed down the list out of their allocated, urgent timeframes.'*

Consideration was also given to whether the misleading impression created by the way the presenter repeatedly referred to Māori and Pasifika being prioritised on surgical waitlists based on ethnicity was 'corrected' by other information provided in the programme including two news bulletins and other comments made. Some comments by the presenter and in the news bulletins did mention other criteria for determining surgical waitlist priority.

However, the Authority came to the position that, insofar as there was any clarifying information, the presenter's repeated references to the way the Equity Adjustor Score would result in surgical waitlist prioritisation being driven by ethnicity meant this information was *'effectively drowned out by the overarching message that ethnicity was the only, or the key, factor in the Score, and Māori and Pacific patients would jump to the top of the surgical waitlist accordingly.'*

As such, the Authority considered Hawkesby's statements to be significantly misleading. Ethnicity was *not* the primary consideration in determining patient priority on the surgical waitlist but the comments *'gave the impression that ethnicity was the only, or the key factor, involved in the assessment, and that Māori and Pacific patients would be given immediate, direct precedence on the surgical waitlist as a result'*.

I concur with the Authority's reasoning here, and moreover, would add some further observations that serve to reinforce its conclusions: The critical piece of contextualising information which was omitted in the broadcast was the fact that the Equity Adjustor Score system introduced by Te Whatu Ora set out different clinical categories in which medical urgency would remain the primary consideration, and only within each 'tier' would the other criteria (including ethnicity) come into play.

In addition to the presenter's misleading statements, the news bulletins at 5.00am and 5.30am mentioned that several factors were being taken into consideration but, crucially, these *also* failed to clarify how these applied in the clinical categories. According to the 5.00 am news segment: *"The new system uses five categories to place patients on a medical waitlist, including clinical priority, time spent waiting, location and deprivation level. But it's the fifth category, ethnicity, that's raised concerns."* This was also repeated in the 5.30 am news bulletin. Mentioning the other criteria alongside ethnicity without explaining that medical urgency would still be the principal consideration determining which patients were allocated to the top clinical tier was still misleading because it incorrectly suggested that clinical priority was only one of several considerations alongside ethnicity.

The news segment also claimed to have spoken to surgeons who questioned the inclusion of ethnicity, seemingly validating the criticisms the presenter had raised. However, these sources were not identified and it was unclear whether the concerns ostensibly being raised by the surgeons were responding specifically to the Equity Adjustor Score itself or to the framing of questions from the Newstalk ZB team. It was also unclear whether the comments from Māori health expert, Rawiri Keenan³¹, defending the inclusion of ethnicity considerations in health policy, might have been construed as referring to the Equity Adjustor Score model as it has been misrepresented in the preceding segment.

In conjunction with the news bulletin statements, the presenter's statements had the effect of providing the primary frame of reference which underpinned subsequent commentary and this provided a misleading premise for the audience's interpretation. The citation of listeners' text feedback also served to reinforce Hawkesby's perspective, for example; *'Kate, outrageous that New Zealand health's now prioritised for Māori ahead of urgent need. Preposterous to have an apartheid system based on race, surely this is New Zealand democracy dismantled'* and *"Kate, here we go again, I wake up this morning only to hear more race-based privileges for a group of people based on race. When's this madness going to stop?"*

The dozen-or-so texts read out were universally damning of the Equity Adjustor Score. Most appeared to be angry reactions to the claims that Māori and Pasifika patients were being placed at the top of the surgical waitlists based on ethnicity alone. It is not clear how the texts were selected, or whether any listeners had texted in with a contrary view challenging the presenter's claims. Somewhat ironically though, the texts provide real-time evidence of audience interpretations and reactions and thereby validate the Authority's conclusions that the broadcast was indeed materially misleading.

One could speculate whether the listeners who texted in comments already had attitudes which predisposed them to react negatively to reports about policies appearing to favour Māori and Pasifika, but even if that were the case, their texts demonstrate that the broadcast validated their prejudices. Despite NZME's defence that the statements were clearly analysis, comment or opinion, the listener texts clearly demonstrate that they were materially misleading in consequence.

The Authority also considered whether NZME might be considered to have made reasonable efforts to ensure the accuracy of the broadcast. While noting that the broadcast was live, the Authority disagreed that the broadcaster's efforts were adequate. The reasons for this were that;

- *The accuracy of Hawkesby's statements was reasonably capable of being determined by the broadcaster, given accurate information about the nature of the Score had been presented in news bulletins in the same programme. Hawkesby herself also described the five criteria under the Score on one occasion.*
- *Despite accurate information being to hand, the host put a misleading spin on the story, and was allowed to repeat misleading statements numerous times over the course of the broadcast.*
- *As noted above, any 'correcting' information was effectively cancelled out.*
- *The subject matter was topical and carried public interest.*

I generally concur with the Authority's assessment that NZME permitted materially misleading statements to be broadcast and did not make sufficient effort to prevent this. But on the point that the correct information about the surgical waitlist criteria (i.e. the other criteria by which patients on surgical waitlists would be prioritised) was included

³¹ This was evidently a recorded and edited interview because the programme did not introduce Keenan as a live guest in the same manner as the second interviewee, Bryan Betty. This is quite common for early morning news bulletins.

and that therefore the broadcaster and presenter could- and should- have presented an accurate account, I might offer a slightly different perspective.

I would suggest that the way the information about the other criteria was framed could still be regarded as materially misleading. Crucially, it omitted the relevant contextual information about the different clinical categories, specifically the point that *clinical need* was still the principal consideration determining patient surgical priority. Thus only *within* each category/tier would the other factors like time on the waitlist, socio-economic status, area of residence and ethnicity be considered in determining patient priority. In this respect, the broadcaster arguably failed to ensure accuracy both in respect to the presenter's statements *and* the news bulletin component of the programme.

On a separate but related point, it was interesting to note that NZME had suggested that an accurate version of the Equity Adjuster Score policy carried in one of its other news publications, the New Zealand Herald, was a mitigating factor. NZME does share news resources across its publications and radio stations and Newstalk ZB and the NZ Herald are both subsidiaries. But the suggestion that an inaccurate or misleading broadcast on the former might be offset by a correct report on the latter merits some further reflection.

Interestingly, in Case 2 (Al-Jiab and Television New Zealand Ltd), TVNZ acknowledged an inaccuracy in a 1News item regarding the plan for a partial Israeli withdrawal from Gaza. TVNZ did not broadcast a correction on 1News itself but subsequently included an updated story with the correct information on its website. In some respects, this may seem comparable with the NZME position, although the context of the TVNZ story correction was somewhat different, i.e. a still-unfolding news story where the facts were still coming to light and the inaccurate detail in the initial report would have been corrected in subsequent reporting both on TVNZ and other media.

Nevertheless, there is a question here of the circumstances under which an otherwise misleading comment might be mitigated or corrected through a channel or platform *different* from the original broadcast, and indeed, whether this necessarily requires that channel or platform to carry the same branding. The other complexity here concerns the significant trend toward audience fragmentation and new patterns of content discovery. It cannot be assumed that the audience which viewed/listened to an inaccurate broadcast (and was therefore misinformed) would be aware of any correction if this were issued through a different channel/platform.

10.0 Concluding observations

All the cases discussed in this report represent differing degrees of interpretative complexity, but the nature of the Authority's role in adjudicating complaints about breaches of the Accuracy Standard which have not been resolved by the respective broadcasters in the first instance means that conflicting views are inevitably involved. In every case, the Authority's deliberations evidence careful and systematic application of the Accuracy Standard, starting with the right to freedom of expression and then working through the 'limbs' of the Standard. In several instances, this has entailed the sourcing of substantial supporting reference material as well as citations of the Authority's previous determinations where these provide relevant guidance. As such, I have no hesitation in affirming that the Authority is undertaking its responsibilities under the Broadcasting Act with appropriate diligence and general consistency.

That the Accuracy Standard is potentially more complex than it sounds is evident when one considers the different components of the Accuracy Standard, including the requirement that broadcasts are a) accurate in relation to all material points of fact, and b) do not materially mislead the audience in respect to the facts. These implicitly assume that it is possible, respectively, to distinguish between what is factual and what is not, and to infer whether the audience is liable to be misled in some way. As John Burrows' 2022 Accuracy Standard review notes, there is a question over which takes precedence, i.e. whether any statement deemed inaccurate is *materially significant* or whether it *materially misleads*. Both are salient in the Authority's decisions. The former mainly concerns the relationship between the way events or issues are representations in the content (ultimately, a question of veracity, validity of framing, and inclusion/non-omission of relevant information), while the latter mainly concerns audience interpretation (ultimately a question of the meanings most likely to be derived from the broadcast by a listener/viewer). But in line with the preliminary observations about the nature of 'accuracy', neither can be determined with absolute objectivity³².

³² By 'objectivity' here, I mean a definitive perspective/version of events which is indisputably true for everyone. See, for example, Waisbord, S. (2018). Truth is What Happens to News: On journalism, fake news, and post-truth. *Journalism Studies*, 19(13), 1866–

Across the five cases discussed, I am in general agreement with Authority's determinations on whether or not to uphold the respective complaints and the general consistency of approach. However, the assessment of the factors that moderate whether the Accuracy Standard has been breached (e.g. analysis/comment/opinion, reasonable effort by the broadcaster to ensure accuracy, technical or trivial inaccuracy unlikely to be materially misleading) can be more complicated. On the points where I have suggested that further reflection on the Authority's deliberations might be merited, there are three themes to highlight, all of which have influenced the Authority's determination on the complaints to varying degrees:

- a. How statements made by a programme presenter or interviewee are identified as analysis, comment or opinion (to which the Accuracy Standard does not apply) and if so, whether a statement might still be considered '*materially misleading with respect to any facts: referred to; or upon which the analysis, comment or opinion is based*'.
- b. The criteria for evaluating whether the broadcaster has made a 'reasonable effort' to ensure accuracy.
- c. Given the requirement for broadcasters to correct misleading statements within a reasonable period, which channels/platforms are deemed appropriate.

10.1 Distinguishing fact from opinion

In respect to the differentiation of fact v analysis, comment or opinion, all the cases reviewed except for Al-Jiab and TVNZ entailed consideration of whether or not statements included in the broadcasts were exempt from the Accuracy Standard based on this criterion. As the Accuracy Standard Commentary and Guidelines (6.1) explain, even where statements are identifiable as opinion, the broadcaster is still obliged to make reasonable efforts to ensure these are not materially misleading '*whether facts are stated directly or form the basis of an opinion*'. The potential harm attributable to inaccurate and misleading statements also has to be evaluated against public interest criteria.

Overall, I consider the Authority's deliberations here to be consistent with the provisions in Accuracy Standard, although some complexities arise in the consideration of how far one can directly infer whether a statement constitutes opinion from the status/positioning of the commentator as opposed to the lexical and semiotic features of the broadcast (for example, in Pack-Baldry et al. and TVNZ, the Israeli ambassador's position is largely self-evident; in Zaky and RNZ, Benjy Treister's position is more ambiguous and depends more on what is actually said).

10.2 Reasonable efforts to ensure accuracy

The identification of inaccuracies or misleading statements is only one part of the Accuracy Standard. The Authority is still required to consider whether the broadcaster made reasonable efforts to ensure accuracy and/or acted to correct a material error of fact. To differing degrees, this criterion played a role in the Authority's deliberations in all the cases discussed. Just how much effort to ensure accuracy is 'reasonable' depends on other criteria including context and genre/format. For example, in the context of breaking/ unfolding stories (e.g. see Case 2, Al-Jiab and TVNZ) the public interest in reporting the event/issue may outweigh the need to verify every detail before going to air. Likewise, in programmes featuring live-recorded interviews (see Case 1, Pack-Baldry et al. and TVNZ), even assuming the interviewer is well informed, it is obviously not practical to fact-check every point in real time. Similarly, where a broadcaster has relied on the expertise of an interviewee on a technical matter that is not readily verifiable by non-experts, then there is a degree of good faith that the expert knows what they are talking about (e.g. see McGlone and TVNZ).

Generally speaking, I consider the Authority's application of this criterion to be consistent with the Accuracy Standard. However, complications do arise in cases of broadcasts in which analysis, comment or opinion is misleading with respect to facts referred to or factual assumptions upon which the opinion is based. If it was reasonable for the broadcaster to have identified or be aware of an inaccuracy but the comments were permitted to stand without correction, moderation or challenge then there is arguably a breach of the Accuracy Standard (affirmed in case 5, Wilson

1878. <https://doi.org/10.1080/1461670X.2018.1492881> Also see- Schudson, M. (2022). Journalism's Multiple Gods- Objectivity, its Variants and its Rivals. In S. Allen (Ed.) *The Routledge Companion to News and Journalism* (2nd ed). London: Routledge. <https://doi.org/10.4324/9781003174790> And- Ekström, M., & Westlund, O. (2019). Epistemology and journalism. In H. Örnebring (Ed.). *Oxford Encyclopedia of Journalism Studies*. New York: Oxford University Press.

and NZME, but not in case 3, Zaky and RNZ). On that point, as my questions about the respective level of interviewer challenge to interviewee in Case 1 and Case 3 highlighted, it may be useful to take into consideration the level of challenge by an interviewee in assessing whether a broadcaster has made 'reasonable efforts' to ensure accuracy.

10.3 Requirements to correct inaccuracies

The second 'limb' of the Accuracy Standard concerning the requirement to correct inaccuracies, raises a question over the alternative channels through which a correction or compensating correct broadcast might be made. The Codebook's explanation of the Accuracy Standard is not very specific on that point. It states that, *'In the event a material error of fact has occurred, broadcasters should correct it within a reasonable period after they have been put on notice'* (6.0) and that, *'Where an obligation to correct a material error of fact arises, the broadcaster may correct it in such manner as is reasonable (eg via broadcast or its website)'* (6.6).

This implies that a correction may occur through a different channel/platform from the original broadcast. However, if the function of requiring corrections is to reverse or ameliorate any harm stemming from a misleading broadcast, this would seem to assume that the audience members misled by an inaccuracy in an original broadcast are made aware of the correction. This cannot be guaranteed even if the correction is carried on the original channel- and is even less likely if it were only carried online, especially in a digital multiplatform environment characterised by audience fragmentation. In Case 2 (Al-Jab and TVNZ), an inaccuracy was acknowledged by the broadcaster and a correct version was carried on its own website but not the original broadcast channel; in Case 5 (Wilson and NZME), the broadcaster suggested the misleading impact of the radio broadcast was mitigated by an accurate version on a differently-branded news website.

The Authority's decision to uphold the complaint in Case 5 but not Case 2 was justified, but did not rest solely on considering the mode of correction. Nevertheless, it is interesting to consider the extent to which inaccuracy in a broadcast on one channel can be compensated for by correct reporting on a separate but same-brand platform versus third party channels/platforms. Consider also that inaccuracies arising from breaking news reports where there is high public interest but little opportunity for more rigorous verification may not *seriously mislead* so long as updated, correct versions of the issue at hand are reported in due course. Thus, it might be argued that the 'correction' has occurred as a function of the media ecology as a whole rather than through the individual broadcaster. However, if that were accepted as a general principle, it should certainly not be interpreted to mean that one broadcaster's material error of fact need not be corrected so long as other media broadcast or publish the correct information.

10.4 Extent of Authority Deliberations on the Accuracy Standard

The Authority also requested a comment on how exhaustive its published deliberations need to be in the context of complaints entailing multiple complaints from different complainants alleging breaches of different standards, particularly where a specific breach of standards is easily (in)validated.

The case of Pack-Baldry et al. and TVNZ is arguably instructive here because the Authority clustered the various complaints around the standards and considered these as a whole. Given the long list of alleged inaccuracies, it would arguably be cumbersome and largely unnecessary to subject each point of complaint to a separate formal process starting with consideration of the right to free expression and then applying the Accuracy limbs and sub-criteria including the fact v opinion condition and the broadcaster's efforts to ensure accuracy or issue corrections.

Given that the Authority does have quasi-judicial standing and can impose legally-binding orders, on occasion the Authority's decisions have been subject to legal challenge. Its decisions need to include sufficient analysis and reasoning to provide adequate justification from the perspective of both the complainant and the broadcaster while avoiding superfluous analysis and detail.

For example, if there are complaints about multiple parts of a broadcast being inaccurate, it logically requires only one example to be demonstrated (taking account of the mitigating criteria) in order for a complaint to be upheld. If orders imposing penalties are merited, then there would presumably be a greater requirement to demonstrate the extent and impact of the Accuracy Standard breaches and consequently more onus on the Authority to provide additional detail.

Given that the purpose of the Broadcasting Act and the standards is to protect the public from harm (in this case from the harm of being misinformed or misled), a key consideration here is ensuring that complainants (as well as

broadcasters) can recognise that the Authority has considered their complaint diligently and consistently. Given recent concerns about the declining level of public trust in the media, it is important not only that the Authority makes justified decisions, but is seen to make justified decisions transparently. Although complex complaints from multiple parties may well necessitate thematising and summarising the key issues as they relate to the Accuracy Standard (as in Pack-Baldry et al. and TVNZ), in contentious cases, erring on the side of offering fulsome explanation may be justified.
