

07.03.22.

Malo lava BSA Board Members,

At the outset may I please again thank you again for your thoughtful consideration of our complaint (2020 – 063),<sup>1</sup> the rigorous process and the support of your staff Grace and Raina. I would also like to mihi to one of our Pacific communities' leaders who we are extremely fortunate is now serving alongside you all – fa'afetai tele lava feleni Tupe for your tautua (service and commitment to service).

Thank you for the opportunity to submit on this review in the past I have complained under both radio and free-to-air broadcast codes and it was harder to navigate the separate codes. The broad approach to simplify and condense three into one is great work.

### **Code Book Introduction**

The background to the code references the three P's around Te Tiriti. I would ask that you please shift these to the five principles which WAI2575 has articulated. While in a health and disability context these are also relevant here, and better reflect in my review the functions we are collectively responsible to - Tino rangatiratanga, Equity, Active Protection, Options and Partnership.<sup>2</sup> Further, under the heading **Broadcasters** a reflection has been made about our collective responsibilities, that I hope is strengthened changing the focus that te reo, tikanga and te ao Māori have constitutional centring rather than a "special place".

In a previous Parliamentary submission, I reflected on our constitutional languages of the Realm of New Zealand, and the lack of action on these across Parliament, Government and society. I ask that the Code please be in all languages of the Realm of New Zealand.<sup>3</sup> Please see the table from my submission, and the link below to further context. A members bill (the Oaths, Declarations, and Affirmations Amendment

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<sup>1</sup> <https://www.bsa.govt.nz/decisions/all-decisions/tualamalii-and-whittaker/>

<sup>2</sup> <https://www.health.govt.nz/our-work/populations/maori-health/he-korowai-oranga/strengthening-he-korowai-oranga/treaty-waitangi-principles>

<sup>3</sup> Detail about the Realm context which should also apply here: [https://www.parliament.nz/resource/en-NZ/53SCEW\\_EVI\\_80226\\_EW1362/281b746882bde789567b0e9456241c112aff6674](https://www.parliament.nz/resource/en-NZ/53SCEW_EVI_80226_EW1362/281b746882bde789567b0e9456241c112aff6674)

Bill) is in the ballot which would enable greater recognition of our responsibilities to these taonga too.<sup>4</sup>

Category 1	Te Reo Māori	Permanent	Specifically separate Te Reo Māori to make clear Parliament recognises its special status as the indigenous language and its dialects that are unique to Aotearoa.
Category 2	New Zealand Sign Language, Cook Islands, Niue and Tokelau	Permanent	Distinct category to highlight that New Zealand must strengthen and honour its responsibility to these constitutionally significant languages. As highlighted above for the Realm, and for NZSL as a language of accessibility, and to ensure the protection of Deaf culture.

(Table from advice to Select Committee, the full submission can be found linked below)

### Comments on the code

All classifications, warnings and helpline displays, complaint retraction messages, and any other public label should be expected to be provided in English and Te Reo demonstrating the commitment of the Authority to the principles of Te Tiriti and Te Reo as taonga we must all use wherever possible.

**1.7.** – It would enable best practise wellbeing support to also have “mental health and addictions and abuse support” helplines mentioned when content focuses on or, depicts these important topics.

I would encourage the Authority to include a provision here that complementary to support lines credible digital wellbeing tools are also appropriate to include in this support contacts list. The BSA website could have an annual digital wellbeing support list on its broadcasters can reference. This future proofing support would help reflect the growing digital technologies and supports which are effective, clinically rigorous and at times quicker to access than phone lines. Digital health support such as Le Va’s Aunty Dee,<sup>5</sup> a cognitive behavioural therapy tool developed by Pacific wellbeing clinicians, cultural and

<sup>4</sup> <https://www.parliament.nz/en/pb/bills-and-laws/proposed-members-bills/oaths-and-declarations-realm-of-new-zealand-languages-amendment-bill-barbara-edmonds/>

<sup>5</sup> <https://www.auntydee.co.nz/>

community leaders assists tangata e whaiora (people seeking wellness) support with structured problem solving and if further needs arise people are transferred to telehealth support from Whakarongorau Aotearoa.<sup>6</sup> Another being Mentemia (from the 15 of March Groov) led by Sir John Kirwan and his credible team.<sup>7</sup> An alternative approach could be requesting the Ministry of Health continue its COVID19 digital self-help tools as a BAU function and the Authority include a link to this.<sup>8</sup>

**1.14.** – I note my thanks to BSA staff for responding to my query to clarify that wording in this section also meant the helpline information was expected on pay/subscription online content too.

**Section 1 Commentary** – In the following commentary section, it would enhance this document to remove what I perceive to be a brief unnecessary tone here, and there could be an opportunity to have a more mana filled reflection. “The feelings of the particularly sensitive cannot dictate what can be broadcast.” (Page 7)

**3.** – This section should be broadened to specifically name, gambling,<sup>9</sup> tobacco and vaping.

The most recent World Health Organisation, UNCIEF and Lancet Commission into ‘A future for the world’s children?’ co-chaired by Rt. Hon. Helen Clark, and released in February 2020, has called for a regulators to more strongly act against commercial harm to children. They say:

“Children around the world are exposed to severe threats from the commercial sector, by advertising and marketing that exploits their vulnerability, by governments not regulating products that harm their growth and development, and by use of their data and images without their knowledge and permission. According to Kickbusch and colleague’s approaches to health promotion have “totally underestimated globalised corporate power combined with its global marketing onslaught and its transnational influence on political decision making,” a discussion

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<sup>6</sup> <https://whakarongorau.nz/>

<sup>7</sup> <http://www.groovnow.com/>

<sup>8</sup> <https://www.health.govt.nz/covid-19-novel-coronavirus/covid-19-health-advice-public/covid-19-mental-health-and-wellbeing-resources>

<sup>9</sup> As per Ministry of Health definition - <https://www.health.govt.nz/our-work/mental-health-and-addiction/addiction/gambling>

that has yet to be explicitly extended to children.”- (Page 630)<sup>10</sup>

“Children worldwide are also highly exposed to advertising for products nominally for use by adults only, such as alcohol, tobacco and e-cigarettes, with exposure to advertising associated with greater consumption.” – (Page 631)

In the context of this review while I consider provisions specifically related to children’s hours to be strong, the comments in the ‘Clark report’ sets the imperative that for gambling, tobacco and vaping promotion minimum expectations must be explicit and regulators that do not name the risks as broadly as possible are not recognising the vulnerability of children adequately. Naming these areas will support extremely clear expectations for broadcasters, as well as enable communities to better understand the standards and so when needed have an easier ability to participate in the complaints process. The specific reference to substance abuse is good, and these suggested additions would strengthen that.

**4.** – This standard should be updated to reflect the definition of the ‘Conversion Practises Act’ – which covers sexual orientation, gender identity, or gender expression,<sup>11</sup> rather than sex and sexual orientation only.

**8.** – Thank you again for upholding our complaint under discrimination and denigration standards. The changes to reflect these decisions are good. I wonder if like the Human Rights Commission this section should also refer to general use of te reo, or terms like pākehā are not discriminatory or denigration, a taonga that the BSA will protect under Te Tiriti.<sup>12</sup>

An area I would like clarity on in terms of this section is what impact would this have on the decision in Anderson and Canwest Radioworks Ltd – 2006-118 if there was the same facts today. Referring to the late His Royal Highness as “fat” “brown” “slug” draw on tropes of Pacific peoples that are easily visible stereotypes, and I consider these to be reinforcing of them and denigrating.<sup>13</sup>

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<sup>10</sup> [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(19\)32540-1/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(19)32540-1/fulltext)

<sup>11</sup> <https://www.legislation.govt.nz/act/public/2022/0001/latest/LMS487215.html>

<sup>12</sup> <https://www.rnz.co.nz/news/te-manu-korihi/451684/hrc-to-stop-hearing-individual-complaints-on-use-of-te-reo-maori>

<sup>13</sup> As have been shown in illustrations like this – <https://www.stuff.co.nz/marlborough-express/news/8736353/Racist-cartoon-slammed>

Finally, one strong success for our case was the external eminent cultural advice. It would be good for clear information in this standard commentary about cultural reports in the appropriate contexts to support determinations.

### **Formal complaint or not**

As to this specific discussion document question about whether something that does not specify all needed details for a 'formal complaint' and if details should be just be considered feedback, the Authority should hold the expectation that Broadcasters must seek clarity to enable easier participation in the process for the public. For example if someone sends material and the intention is not clear the burden should be on the Broadcaster to reply with an educative reply something to the effect of:

“Thank you for your email and this information. Were you intending to submit a ‘formal complaint’, if so for a formal complaint x, y and z are required. If this was intended as feedback we thank you for that and we have noted this...” etc.

It is especially important for people raising complaints for the first time that they are supported to participate, and the process acknowledge that without this misunderstanding could increase in the process.

### **More widely**

While outside of the scope of the Codebook review, I was wondering if BSA might please consider picking up the question and lead some advocacy around the question I raised in my letter also addressed to Minister Faafoi at the time around an “opportunity for communities who experience broadcast harm to feedback whether the penalties available to deter these actions, and remedies are culturally appropriate.”<sup>14</sup>

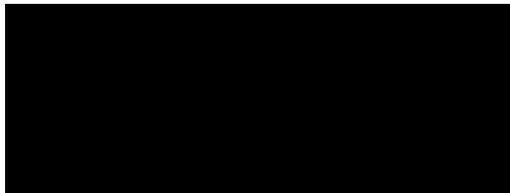
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<sup>14</sup> BSA Complaint Letter of Thanks - 26.01.21

Three other areas wider than this review I am interested in future consideration of advocacy by the BSA to the Minister and Government include:

- Whether internal complaints review committees in broadcasters organisations should have external lay people to increase the scrutiny and community voice earlier in the process. As part of this in giving effect to Te Tiriti should all committees have tangata whenua voice, and particularly if complaints are relating to particular whether there should be minimum expectations around accessing cultural advice, or a compulsory skills matrix in committee panel appointments.
- Whether the BSA or some other entity ought to be able to accept complaints about people producing content on social media masquerading as alternative broadcasting spreading misinformation and disinformation. It was good to see this area around harm in mediums that the Authority do not have direct coverage of, has been reflected on by at least 2006.
- Whether the separation of the various authorities enables best public participation, and coherence across the RA's.<sup>15</sup>

Fa'afetai tele,



Josiah Tualamali'i

*(Personal contact details have been kept in the body of the email so they are not published)*

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<sup>15</sup> <https://www.bsa.govt.nz/oldsite/assets/Research/The-Future-of-Media-Regulation-in-NZ.pdf>